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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 305 (JMF)

5 NATHANIEL CHASTAIN,

6 Trial

7 Defendant.

8 -----x

9 New York, N.Y.
10 April 27, 2023
11 9:00 a.m.

12 Before:

13 HON. JESSE M. FURMAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

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22 NICHOLAS BARNES

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(Trial resumed; in open court; jury not present)

THE COURT: First, there are a bunch of things to cover because the government seems to have been up all night. But first let me make a record on something, which is: The first alternate juror, Mr. Sklar, you may recall during voir dire, he mentioned he had a friend who had a startup or ran a startup, or something of that nature, and couldn't remember the name of it. He appears to have remembered it and shared it with Ms. Smallman. I think it's something called Floor.

Perhaps more relevant, because I don't see why that would matter, he said that having now heard from Mr. Atallah, that that name rings a bell, but he also made clear to Ms. Smallman that he didn't know or remember anything about him that would affect his ability to be fair and impartial.

So I am inclined to think that there's no need for any follow-up, but I wanted to share that with both sides. If you think otherwise, you should let me know.

Number two, let me make a record on my ruling this morning by text-only order regarding the Skinner charts.

I feel compelled to note that the defense submission was filed at 1:06, not by 11:59, when I was awake and ready for it.

MR. FILOR: Apologies, your Honor.

THE COURT: All right. I would, frankly, be more sympathetic if it were a substantial filing that had citations

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1 to the law, but it was a three-page filing that largely recited
2 Professor Skinner's CV, and, in that sense, I don't see why it
3 needed to be filed late.

4 But be that as it may, the motion was granted. Let me
5 explain why.

6 First, I think the issues relating to the charts, and
7 the charts, are not relevant to the issues in this case. Trust
8 is certainly relevant because it helps explain why OpenSea
9 treated the relevant information as confidential. That is to
10 say, it is relevant to the state of mind of OpenSea or of its
11 principals before and at the time of the charged conduct.

12 Whether Mr. Chastain's conduct, upon being revealed, affected
13 trust in the company is irrelevant to that issue and irrelevant
14 to any issue at trial. And I would note, on that score, that
15 the defense's own submission states that the evidence is
16 intended to "rebut any suggestion that there was an effect."

17 That's not the issue in this trial. Actual harm is
18 not something that the government needs to prove. So whether
19 there was an effect is not relevant; it's the state of mind
20 prior to and at the time of the defendant's conduct. That is
21 from page 2 of the defendant's response.

22 Second, even if it is relevant, I agree with the
23 government that the testimony and charts are unreliable, and
24 therefore failed my gatekeeping review under *Daubert*. There is
25 no possible way that that testimony or the charts count for all

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1 possible variables.

2 Mr. Chastain's employment was terminated promptly upon
3 OpenSea finding out about his conduct, and OpenSea took various
4 remedial measures to evaluate the impact of his conduct. One
5 would have to come up with a way of analyzing the but-for world
6 in which the public found out about his conduct, but OpenSea
7 didn't take those remedial measures. I don't see how Professor
8 Skinner could do that; and the response certainly doesn't
9 explain how he can, except to say that he will explain his
10 direct. But my job under *Daubert* is to determine whether the
11 jury can even hear direct; that is to say, there's a
12 gatekeeping role, and that conclusory assertion, which amounts
13 to trust, just doesn't cut it.

14 Confounding matters, there was testimony – there has
15 been testimony – in this trial that OpenSea was growing
16 exponentially during the relevant time; thus, the fact that
17 users' transactions and the like increased after the
18 defendant's conduct was revealed proves nothing. Again, one
19 would have to compare the after period to what would have been
20 in the absence of the defendant's conduct, and I see no way one
21 could possibly know that and exclude the other possible
22 variables, and Professor Skinner has certainly not explained
23 how he knows it.

24 And, finally, even if the defense could overcome these
25 hurdles, the evidence would fail the Rule 403 balancing test.

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1 The government has represented that it will not present
2 evidence through Dr. Taylor or otherwise regarding the impact
3 of the defendant's conduct. At most, therefore, the evidence
4 is relevant to the issue that I flagged in my pretrial ruling
5 to rebut any argument that the literature of trust applies to
6 OpenSea. Frankly, I find it hard to see how this evidence does
7 rebut that, but to the extent that it does, the dangers of
8 unfair prejudice – namely, that even with a curative
9 instruction, the jury will improperly consider the alleged lack
10 of actual harm on OpenSea – substantially outweigh any
11 probative value.

12 So, for those reasons, the motion was granted.

13 MR. FILOR: Thank you, your Honor.

14 May I briefly proffer a little bit on that?

15 THE COURT: No.

16 MR. FILOR: May I make a record?

17 THE COURT: No.

18 MR. FILOR: Okay. Thank you.

19 THE COURT: You had an opportunity to do that. You
20 did it an hour and six minutes late, and we're done.

21 I want to prioritize and focus on the things that need
22 to be addressed this morning.

23 I would think, on that score, the argument in the
24 second most penultimate filing of the government regarding
25 Dr. Skinner's demonstrative exhibits is probably the most time

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1 sensitive or relevant. To the extent that we can touch on
2 other issues, we'll get to other issues, but does the defense
3 wish to be heard on that? As I understand it, it's two of the
4 pages of the demonstrative, the one about baseball cards and
5 the one about a level playing field, and, I would imagine,
6 related testimony.

7 MR. FILOR: Yes, your Honor.

8 As the Court is aware, that brief came in, I believe,
9 at midnight or thereabouts last night. I did have an
10 opportunity to review it on my phone. Briefly to respond to
11 that, as the Court is aware, the disclosure that the experts
12 make is not intended to be a verbatim of their testimony. All
13 of the demonstrative charts, which are not being presented to
14 the jury to be put into evidence, they're as a demonstrative
15 teaching aid, all of those bullet points relate to the trust
16 issue that we expect Dr. Taylor to be bringing up.
17 Specifically, the only way that trust can relate to the OpenSea
18 marketplace for NFTs would be if it is considered to be a level
19 playing field and if other requirements are met, such that it
20 is closer to a regulated securities market.

21 All of these trust issues, and any potential erosion,
22 theoretical erosion, of trust, and the academic literature with
23 respect to trust, which focuses on the securities industry, not
24 the NFT marketplace, those all need to be discussed with
25 respect to academic literature cited by Taylor, which is what

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1 Professor Skinner responds to. He's read all of the academic
2 literature that was presented by Taylor, and these are the ways
3 to respond to those issues.

4 So it's purely rebuttal, your Honor.

5 THE COURT: So, can you articulate and explain – what
6 relevance does the analogy to baseball cards versus stocks have
7 to that? I don't hear the government arguing that if
8 Dr. Taylor testifies that the literature of trust applies to
9 OpenSea, it's fair game for Dr. Skinner to rebut that
10 testimony.

11 I should ask the government – I assume you're still
12 planning to call Professor Taylor, or has that changed?

13 MR. BURNETT: We're still in the same position we were
14 in yesterday, where we're going to wait to see how the
15 testimony before him comes in today to make a final decision,
16 your Honor.

17 THE COURT: All right. So I'll presume that you are,
18 since I have to proceed.

19 MR. FILOR: Thank you, your Honor.

20 THE COURT: I don't understand the baseball card
21 analogy. Whether NFTs are more like stocks or more like
22 baseball cards doesn't really go to any issue in the case,
23 because there's no dispute that they are traded. I just don't
24 understand the relevance.

25 MR. FILOR: Your Honor, I didn't fully understand it,

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1 to be honest, before I learned about it from Professor Skinner.
2 The reason is because all of the literature with respect to
3 trust – and it is a very limited universe, there's a half a
4 dozen articles, including his colleagues of Professor Skinner
5 at the University of Chicago, who wrote those papers and
6 participated in the studies – the trust is only with respect to
7 the stock market. That's what's been tested so far.

8 To extrapolate it to the NFT marketplace is not a fair
9 comparison. And for the reasons that stocks in a regulated
10 area, versus trading art or baseball cards or any number of
11 other things that are not a regulated playing field, that those
12 regulated securities markets have rules, they have regulations,
13 they have the SEC looking over them, and the position of the
14 SEC and their role is to try to create a level playing field.
15 There's nobody doing that in the NFT marketplace, which is more
16 similar to other traded goods, like baseball cards or fine art.
17 And there has not yet been any academic literature attempting
18 to bring the trust argument and the level playing field
19 argument to the NFT market.

20 So that's why, when Professor Skinner looks at the
21 articles cited by Professor Taylor, where Professor Taylor is
22 trying to extrapolate into new areas that are not regulated,
23 the question is, well, why would trust be applicable in the NFT
24 marketplace? Or some other marketplace, some other traded
25 goods marketplace, why is it, what do the studies underlying

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1 Professor Taylor's report require that got you to the trust
2 place, that that is an important element? Because in the NFT
3 marketplace, we have already seen testimony about OpenSea's
4 drops that allow certain NFTs to be bought by just a small
5 group before it goes to the market. Before it goes to the
6 public, there can be multiple drops. There are these various
7 rooms that we've heard about from the witnesses, white lists
8 and alpha rooms, where people have access to mint these things
9 first before anybody else. None of those things could happen
10 in the regulated securities, stocks and bonds markets.

11 They are allowed to be in the NFT market, OpenSea
12 encourages it, it's on their website. There's no reason,
13 Professor Skinner will say, to be able to extrapolate this
14 trust idea, which, again, is only in half a dozen academic
15 articles at all.

16 So it's cutting-edge that Professor Taylor is trying
17 to extrapolate, and so Professor Skinner would like to be able
18 to address that, both with respect to the academic literature
19 and why trust should not be relevant to the NFT market.

20 THE COURT: All right.

21 Before I hear from the government on the last slide,
22 the level playing field slide, I think the concern is
23 severalfold:

24 Number one, the source doesn't seem to support the
25 proposition for which it's cited, which is to say – and I

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1 visited the web page itself – it appears to be a description of
2 how some people sell NFTs, not encouragement, per se; and, in
3 that sense, to the extent that it is cited as OpenSea
4 encouraging conduct that's inconsistent with having a level
5 playing field, I don't think it's accurate.

6 Number two, it's the website today, in April 2023.
7 Absent evidence that that website was the same in 2021, at the
8 relevant time for this trial, it strikes me that it's not
9 relevant to the issues in this case.

10 And, number three, I think you already have evidence
11 from which you can make the argument that you just made,
12 namely, that, in essence, the jury shouldn't believe
13 Mr. Atallah and Mr. Finzer's testimony that the information
14 here was confidential – again, I want to keep the focus on
15 that; that's the only relevant issue on this score – they
16 shouldn't believe that testimony because to the extent that
17 they cite trust as an element of it, they were not otherwise
18 behaving in a manner that was consistent with emphasizing and
19 valuing trust. There's plenty of basis to make that argument.
20 It just strikes me as overkill to -- anyway, this case is not,
21 ultimately, about whether OpenSea, as I said yesterday, lived
22 up to its values and whether it was a fair market. That's not
23 what this case is about. The case is about whether this
24 qualified as property and confidential business information.

25 MR. FILOR: Your Honor, I understand those points.

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1 Those are perfectly good cross-examination points, and I would
2 expect the government to do their best to go after
3 Professor Taylor on some of the things like that.

4 But a level playing field is a requirement that is the
5 basis for the trust that Professor Taylor is asserting was at
6 issue here.

7 So I think it's fair for them to cross-examine on the
8 issue, but I think Professor Skinner should be able to attack
9 the basis for Professor Taylor's opinions, if he takes the
10 stand.

11 THE COURT: Okay. But I don't see how he can rely on
12 materials from 2023 to support testimony about what was or
13 wasn't the case in 2021.

14 Let me say the following: I'll hear from the
15 government, but my inclination is to say it's fair game for him
16 to say that to the extent that a company operating in a
17 marketplace allowed preferential treatment for certain people,
18 et cetera, that that's not consistent with promoting trust or
19 whatever, is inconsistent with prioritizing trust. That might
20 be fair game, and then you can argue to the jury, you know, you
21 heard testimony that OpenSea did, at the relevant time, allow
22 for preferential treatment, et cetera, et cetera, and,
23 therefore, you shouldn't believe the testimony that they valued
24 trust. I think that is different than him relying on a web
25 page from 2023 for the proposition that OpenSea did not value

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1 trust and/or did not have a level playing field. I think the
2 latter probably crosses the line.

3 MR. FILOR: Understood, your Honor.

4 With the Court's indulgence, to the extent Professor
5 Skinner is able to use a Wayback Machine or something else to
6 find an historical website that was in effect, we would renew
7 the application to present that slide, your Honor.

8 THE COURT: All right. Well, that's a hypothetical
9 I'm not confronted with at the moment.

10 Mr. Burnett, did you wish to respond?

11 MR. BURNETT: Sure.

12 On the baseball card point, I don't think we have any
13 issue with Mr. Skinner saying that the literature on trust is
14 largely focused on equities markets as it exists now, so that's
15 a bad analogy for NFTs. What we're concerned about is the
16 intermediate step that's, well, and NFTs are more like baseball
17 cards. If he wants to make the point that the literature is
18 about stocks and NFTs are different than stocks, he should make
19 that point. He doesn't need to add the comparison to baseball
20 cards, which I think, from our perspective, is like just an
21 attempt to trivialize the nature of the case and doesn't
22 meaningfully clarify any of the issues.

23 There's also no evidence that he is in a position to
24 really meaningfully compare the market for baseball cards and
25 the market for NFTs in a way that's useful for the jury or that

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1 applies his expertise in any way.

2 MR. FILOR: May I briefly?

3 THE COURT: Yes.

4 MR. FILOR: With respect to the last point, that's
5 certainly a perfectly good cross-examination point, and I would
6 expect the government to be able to ask Professor Skinner about
7 those things.

8 With respect to the baseball card point, it's not a
9 card itself that's the issue versus an NFT; the comparison is
10 the marketplace. That's what he's speaking about.

11 That being said, there are baseball cards that are
12 worth a lot of money, so we're not trivializing anything.
13 Professor Skinner's point is about the marketplace versus the
14 securities regulated markets.

15 Thank you, your Honor.

16 THE COURT: I'm going to sustain the government's
17 objections as follows:

18 First, as to the baseball card one, it's really just
19 to the column that pertains to baseball cards because I think
20 the risk of unfair prejudice, namely that the jury will hear it
21 to be trivializing what we're talking about, the bottom line is
22 I just don't think the analogy is necessary or has any
23 probative value and, in that sense, can only cause prejudice.
24 I don't see any problem with the stocks column or the NFTs
25 column as a way of drawing a distinction between the market for

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1 stocks and the market for NFTs and why the literature on trust
2 applies only to the former and not to the latter. But I think
3 the intermediate step of comparing them to baseball cards is
4 not necessary to explain or make that argument or offer that
5 opinion, and, therefore, has no probative value, and to the
6 extent that it has any, I think the risks of unfair prejudice
7 are substantially outweighed.

8 Certainly, at the moment, I will sustain the objection
9 to the level playing field slide. If, through a Wayback
10 Machine or something else, Dr. Skinner can tether it to
11 evidence at the relevant time, perhaps I would let that in,
12 but, more broadly, I think it probably suffices for him to say
13 that to the extent that a marketplace provided for preferential
14 treatment, et cetera, et cetera, that that would not be
15 consistent with the marketplace prioritizing or emphasizing
16 trust. In that regard, I'm not sure that he needs to opine on
17 whether OpenSea did or didn't. I think that's argument that
18 counsel can make to the jury.

19 So, the bottom line is I'm not sure it should come in
20 at all, but, at a minimum, it doesn't come in in its present
21 form. So, if you want to try and cure it, I'll take it as it
22 comes, and if we can address it at a break, we'll address it at
23 a break.

24 MR. FILOR: Thank you, your Honor.

25 THE COURT: On Dr. Edman, do we want to quickly try

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1 and address that? I do want to get started, but what's our
2 thought on timing when we would get there?

3 MR. MILLER: I'm sorry, are you looking at me or the
4 government?

5 THE COURT: I don't really know who I'm looking at. I
6 imagine we're not going to get to Dr. Edman before the lunch
7 break, at a minimum, so maybe we should table that until the
8 lunch, and then we'll see where we are.

9 MR. ROOS: That's right.

10 THE COURT: Okay.

11 I think on the most recent submission, regarding
12 Mr. Thakrar, first, I don't see the government seeking any
13 relief as to Mr. Thakrar. I think it's just laying down a
14 marker for what the permissible bounds of that testimony are.
15 I'm familiar with the law but appreciate the reminder. If the
16 defense has any different view of what they can do, you're
17 welcome to tell me in advance, but, otherwise, I can rule on
18 objections as they come.

19 And on the Defense Exhibit 48, I assume that, too, we
20 can take up later. Is that correct?

21 MR. ROOS: We're not exactly sure which witness it's
22 coming through, but assuming it's part of the defense case,
23 that's totally fine with us.

24 THE COURT: All right.

25 Which witness is that likely to come through?

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1 MR. FILOR: Ms. Sheffield, your Honor.

2 THE COURT: Okay, understood.

3 And yesterday, you identified, I think, five potential
4 witnesses, but there were only four on the email that you sent
5 last night. Is that because you've pared your list or because
6 it's about who's testifying today?

7 MR. MILLER: Well, I think there's two parts.

8 One, I do think we pared our list down a little bit,
9 and, two, we're just trying to game out today. I don't think
10 there's a scenario by which we would get through everything by
11 the end of the day. Maybe I'm wrong, but, obviously, we'll be
12 prepared to do whatever we need to do.

13 THE COURT: All right.

14 So lunch break is not long - I don't want to eat too
15 much of it dealing with these issues - but since we'll have a
16 better sense of where we are at that point, let's table those
17 issues until then.

18 Anything else that we need to discuss before we get
19 Mr. Finzer back on the stand and get the jury in?

20 Nothing? Great. Thank you.

21 Let's get Mr. Finzer, and Ms. Smallman will get the
22 jury.

23 While we're doing that, is somebody in a position to
24 make a record as to what exhibits are in through the
25 stipulations?

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1 MR. ROOS: I knew that was coming.

2 We conferred last night. I think after this witness,
3 I will offer the ones there was confusion on pursuant to the
4 stip that they're listed in.

5 THE COURT: Okay. The third time is a charm.

6 Good morning, Mr. Finzer.

7 MR. ROOS: This may be the fourth time, but...

8 (Continued on next page)

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Finzer - Direct

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. Sorry
3 to keep you waiting. As you know, I like to start as close to
4 9:00 as possible, but we had a couple of matters we needed to
5 deal with this morning just to speed things along.

6 With that, we will continue with the direct testimony
7 of Mr. Finzer.

8 Mr. Finzer, I remind you that you remain under oath.

9 Ms. Nichols, you may proceed.

10 MS. NICHOLS: Thank you, your Honor.

11 DEVIN FINZER, resumed.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. NICHOLS:

14 Q. Good morning, Mr. Finzer.

15 A. Good morning.

16 MS. NICHOLS: Mr. Bianco, could we please pull up
17 Government Exhibit 214, which is in evidence.

18 Q. Mr. Finzer, do you remember that we were talking about this
19 document yesterday?

20 A. Yes.

21 Q. Just can you remind the jury, what is this document?

22 A. This is the confidential information and invention
23 assignment agreement for Nate Chastain.

24 Q. What was your role in drafting or approving this document
25 for OpenSea?

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Finzer - Direct

1 A. My role was setting up the service that sent out this
2 document and deciding to use documents for new employees.

3 MS. NICHOLS: Can we please scroll down, Mr. Bianco,
4 and just highlight the bottom paragraph, 2(b).

5 Q. Mr. Finzer, what is the definition of confidential
6 information that is given in the first sentence of this
7 paragraph here?

8 A. Information and physical material not generally known or
9 available outside the company and information and physical
10 material entrusted to the company in confidence by third
11 parties.

12 Q. So what restrictions, if any, does this agreement place on
13 employees' use of confidential information?

14 A. This agreement tells employees not to share confidential
15 information outside of the company or to use that confidential
16 information for their own personal benefit.

17 MS. NICHOLS: Can we take down that highlighting,
18 Mr. Bianco.

19 Can we have the zoom back, but just not the
20 highlighting. Thank you.

21 Q. So, Mr. Finzer, do you see how, in the second sentence,
22 after the one that you've already read, there is then a list of
23 items?

24 A. Yes.

25 MS. NICHOLS: Can we go, Mr. Bianco, now to the second

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Finzer - Direct

1 page.

2 Q. Mr. Finzer, does that list continue on to the next page of
3 this agreement?

4 A. Yes.

5 Q. Now, does this agreement spell out each and every way that
6 an employee could misappropriate the company's information?

7 A. No, it doesn't. It gives some examples, but it doesn't
8 explain every single way.

9 Q. Why not?

10 A. I think explaining every single possible way -- or type of
11 confidential information would be difficult, given that there's
12 lots of different types of information.

13 MS. NICHOLS: We can take that down, Mr. Bianco.

14 Q. Mr. Finzer, did there come a time when OpenSea began
15 featuring NFTs prominently on its home page?

16 A. Yes.

17 Q. What involvement, if any, did you have in that effort?

18 A. I was involved in some of the planning around it, I worked
19 with one of our designers, Nate, and some of our engineers on
20 it.

21 Q. By "Nate," do you mean Nate Chastain?

22 A. Yes.

23 MS. NICHOLS: Can we please pull up Government
24 Exhibit 202, just for the witness. And just scroll to the
25 second page, please.

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Finzer - Direct

1 Q. Do you recognize this, Mr. Finzer?

2 A. Yes.

3 MS. NICHOLS: Can we go back to the first page,
4 Mr. Bianco.

5 Q. What is it?

6 A. This is a Slack conversation with myself and Nate.

7 MS. NICHOLS: The government offers Exhibit 202.

8 MR. MILLER: No objection.

9 THE COURT: All right. Mr. Miller, can you put the
10 microphone closer.

11 MR. MILLER: Sorry about that, your Honor.

12 No objection.

13 THE COURT: Thank you.

14 Admitted.

15 (Government's Exhibit 202 received in evidence)

16 MS. NICHOLS: May it be published?

17 THE COURT: It may.

18 BY MS. NICHOLS:

19 Q. Mr. Finzer, now that everyone can see it, what is the date
20 of this conversation?

21 A. The date is May 8, 2021.

22 Q. And who are the participants to the conversation?

23 A. Myself and Nate Chastain.

24 Q. Can we just read some of the messages in this chat? And
25 can you just read your own messages, and I'll read

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Finzer - Direct

1 Mr. Chastain's. So start with the first one, please.

2 A. Sorry if I missed this, but how often do we rotate the home
3 page NFTs?

4 Q. Mr. Chastain: No problem - we haven't set that in stone,
5 but I'm going to be overseeing this until we automate the
6 process. My initial impression was that we can rotate this out
7 every three days or so, but we may play with that cadence.

8 Mr. Finzer, can we then skip down to your next line in
9 this conversation.

10 A. Cool. I don't see any favorites there. Is that expected?

11 Should I continue?

12 Q. Yes, please.

13 A. And is this system already automated?

14 So if I add a favorite, will it automatically appear
15 on the home page?

16 MS. NICHOLS: Next page of this exhibit, please,
17 Mr. Bianco.

18 Q. Mr. Chastain drops a link to a screenshot, and then says:
19 They should be showing up. The system isn't already automated,
20 but we're going to target a strategy around automation soon.
21 Items won't automatically show up on the home page if added
22 there. This is just sort of the 'pool' that we'll be adding to
23 to select them, at least to start.

24 A. Oh, weird. It worked when I hit it again.

25 Q. And then in this next message, Mr. Finzer, what is

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Finzer - Direct

1 indicated by the little arrow at the beginning of your message?

2 A. The little arrow indicates that I'm quoting the previous
3 message that he sent so that I can respond specifically to that
4 message.

5 Q. Can you read, starting with your response, the part of this
6 that are your words?

7 A. Sure.

8 SG - which means sounds good - just wanted to
9 highlight that (whether automated or not) I feel strongly about
10 it not getting stale. That was a big issue with our promo
11 cards that a lot of people complained about before we had
12 resources to refresh them, and these assets are even more
13 salient, so I think keeping it fresh is even more paramount.
14 But sounds like there's a good plan in place.

15 THE COURT: Mr. Finzer, just if you can make sure you
16 read slowly enough so that the court reporter can keep up --

17 THE WITNESS: Sure.

18 THE COURT: -- that would be great.

19 THE WITNESS: Yep.

20 BY MS. NICHOLS:

21 Q. Mr. Finzer, why did you feel strongly about the featured
22 NFT not getting stale?

23 A. I wanted the home page to feel fresh for people who were
24 coming back to the site regularly. So, if someone came to the
25 site, you know, a week later, and it was the same exact NFT,

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Finzer - Direct

1 then it wasn't very engaging for people for using the website.

2 Q. From a business perspective, why was it important to you
3 that the site feel fresh to users?

4 A. I think it's around sort of polish and delightfulness for
5 users. If users are coming back, and it's always the same
6 thing, then it's not as exciting or full of an experience.

7 MS. NICHOLS: We can take that down, Mr. Bianco.

8 And can you please pull up, for the witness,
9 Government Exhibit 218.

10 Q. Do you recognize this, Mr. Finzer?

11 A. Yes.

12 Q. What is it?

13 A. This is a message that I sent in response to -- or in the
14 random channel of our Slack group.

15 MS. NICHOLS: The government offers Exhibit 218.

16 THE COURT: Any objection?

17 MR. MILLER: Objection.

18 THE COURT: Overruled.

19 Admitted.

20 (Government's Exhibit 218 received in evidence)

21 MS. NICHOLS: May we publish, your Honor?

22 THE COURT: You may.

23 BY MS. NICHOLS:

24 Q. Mr. Finzer, now that everyone can see it, can you please
25 tell us the date of this conversation?

N4RKCHA1

Finzer - Direct

1 A. August 6, 2021.

2 Q. Do you see the list of names underneath the channel title,
3 #random?

4 A. Yes.

5 Q. Just at a general level, who are all of those folks?

6 A. These are people who were working at OpenSea at the time.

7 Q. Can you read your communication in this message?

8 A. "I really like it when the home page NFTs are semifungible,
9 so lots of folks can buy them. Also looks awesome. Props to
10 Nate Chastain for the great selection."

11 MS. NICHOLS: We can take that down, Mr. Bianco.

12 Q. Mr. Finzer, who -- during the time period that Mr. Chastain
13 worked at OpenSea, who controlled which work got featured on
14 the home page?

15 A. I believe it was Nate, and it may have involved some other
16 people as well, but I know Nate was involved.

17 Q. Other than the two conversations that we just looked at,
18 did you offer input onto the NFTs that should be selected?

19 A. Other than those two conversations, it's possible that I
20 provided input here and there. Though I don't recall another
21 specific instance, but it's quite possible that I commented on
22 whether a particular NFT looked visually appealing or not.

23 Q. And, to your knowledge, did other employees at OpenSea have
24 an opportunity to give input to Mr. Chastain on which NFTs
25 should be featured?

N4RKCHA1

Finzer - Direct

1 A. I believe so. So, through the system that was described on
2 the -- in one of the previous exhibits, there was a system
3 where people could favorite NFTs, such that they would be
4 eligible for featuring on the home page. And then it's quite
5 possible that people kind of gave their own thoughts on which
6 NFTs looked good or not.

7 Q. So now focusing outside of the company, was information
8 about which NFTs would be featured on the home page publicized
9 outside of the company in advance?

10 A. Not to my knowledge, no.

11 Q. Speaking generally, what effect, if any, did being featured
12 on the home page have on the particular NFT's price?

13 A. We noticed that when an NFT was featured on the home page,
14 more people would visit that NFT because it's more salient, so
15 people would click into it, and that if the NFT was on sale, it
16 might sell faster than a normal NFT.

17 Q. What about with respect to the price of that NFT?

18 A. The price could potentially go up in that maybe one person
19 buys the NFT when it's featured and then resells it at a higher
20 price.

21 Q. Prior to mid-September of 2021, did Mr. Chastain ever tell
22 you that he was purchasing the featured NFTs?

23 A. No.

24 Q. Did he ever ask you for permission to do that?

25 A. No.

N4RKCHA1

Finzer - Direct

1 Q. Did he ever tell you that he was planning to purchase them?

2 A. No.

3 Q. Did there come a time when you asked for Mr. Chastain's
4 resignation?

5 A. Yes.

6 Q. Why did you ask for his resignation?

7 A. We asked for his resignation because of the behavior that
8 had occurred in -- and had come to light in previous days.

9 Q. What behavior was that?

10 A. The behavior was purchasing NFTs prior to them being
11 featured on the home page, and then reselling those NFTs.

12 Q. How did you first hear of allegations that Mr. Chastain was
13 doing that?

14 A. There was a tweet from a member of the NFT community. I
15 don't remember exactly when I first saw the tweet. I know that
16 one of our investors sent us a tweet over email, and that was
17 likely the first time that I saw the tweet.

18 Q. And understanding you don't remember the exact timing, can
19 you give us a sense of the span of time between when you first
20 saw the tweet containing the allegations and when you asked for
21 Mr. Chastain's resignation?

22 A. It would have been in the course of either one day or
23 two days.

24 Q. Why did you act so quickly in response to the allegations?

25 A. Well, we wanted to first -- I guess it was a pretty

N4RKCHA1

Finzer - Direct

1 significant -- there was a lot of chatter about it on social
2 media, it was something that was causing a lot of conversations
3 about the potential of this -- or the potential behavior, so we
4 wanted to ensure that we knew what was going on, and we also
5 updated the people that were talking about this in the NFT
6 community.

7 Q. So why did the fact that folks were talking about it mean
8 that you wanted to act quickly?

9 A. Well, part of our company strategy is to be open and
10 communicative with our user base. So when there are events
11 that occur related to our product, we try to act -- generally
12 act swiftly and generally update our community in response.

13 Q. So let's go to the day that you asked for Mr. Chastain's
14 resignation.

15 Where did that conversation take place?

16 A. That conversation was over a call, and I was in the New
17 York office at the time.

18 Q. So who all were the participants to that conversation?

19 A. That would have been myself, Alex, my cofounder, and Gina,
20 our general counsel, as well as Nate.

21 Q. Who spoke during that conversation?

22 A. I believe me and Nate -- I know that myself and Nate spoke,
23 and perhaps Alex said a few words, but it was mostly myself and
24 Nate.

25 Q. What did you --

N4RKCHA1

Finzer - Direct

1 A. Mostly myself.

2 Q. What did you say?

3 A. I don't recall exactly how I framed the conversation, but
4 the gist of it was that I asked Nate to resign.

5 Q. How did he respond?

6 A. He agreed.

7 Q. What was the connection, if any, between Mr. Chastain's
8 actions in buying featured NFTs before they were featured and
9 then selling them after and the confidentiality agreement that
10 we just looked at?

11 A. The connection would be that the knowledge of which NFTs
12 were used or were going to be featured on the home page was
13 information that was privy and specific to the company that was
14 being used to perform those actions.

15 Q. And so did Mr. Chastain's actions violate that agreement?

16 MR. MILLER: Objection.

17 THE COURT: Sustained.

18 Q. Why did you ask for Mr. Chastain's resignation?

19 MR. MILLER: Objection; asked and answered.

20 THE COURT: Sustained.

21 Mr. Miller, louder, please.

22 MR. MILLER: Sorry.

23 BY MS. NICHOLS:

24 Q. How, if at all, did Mr. Chastain's actions reflect on
25 OpenSea's values, as you spoke about yesterday?

N4RKCHA1

Finzer - Direct

1 A. Well, one of our values involves a trusted relationship
2 with the NFT community, so this situation was certainly
3 damaging to that trust at the time.

4 Q. Did OpenSea publicly announce any company policies around
5 the time that Mr. Chastain resigned?

6 A. At the time that Mr. Chastain resigned, we added additional
7 policies that specifically outlined what employees could do
8 with regards to buying and selling NFTs, particularly those
9 that were featured on the home page.

10 MS. NICHOLS: Can we please pull up what's in evidence
11 as Government Exhibit 228.

12 Q. Do you recognize this, Mr. Finzer?

13 A. Yes.

14 Q. And what is it?

15 A. This is a blog post that was published on September 15,
16 2021.

17 MS. NICHOLS: Mr. Bianco, let's take that down,
18 please. No, just the zoom.

19 Great.

20 Can we please zoom in on where it says "Original Post"
21 and then everything after that.

22 Q. Mr. Finzer, is this what you were just mentioning was
23 published on September the 15th?

24 A. Yes.

25 Q. Why, from a business perspective, did OpenSea choose to

N4RKCHA1

Finzer - Direct

1 write this blog post?

2 A. We wanted to provide an update to our user base about how
3 we were handling the situation that we had just learned about.

4 Q. Can you just read, beginning with "yesterday," please?

5 A. "Yesterday we learned that one of our employees purchased
6 items that they knew were set to display on our front page
7 before they appeared there publicly."

8 Q. Can you read the next paragraph, please?

9 A. "This is incredibly disappointing. We want to be clear
10 that this behavior does not represent our values as a team. We
11 are taking this very seriously and are conducting an immediate
12 and thorough third-party review of this incident so that we
13 have a full understanding of the facts and additional steps we
14 need to take. We have also implemented the following
15 policies."

16 Q. Okay.

17 MS. NICHOLS: Mr. Bianco, can you remove that
18 highlighting for us.

19 Q. Mr. Finzer, the first bullet point here, could you please
20 read that?

21 A. "OpenSea team members may not buy or sell from collections
22 or creators while we are featuring or promoting them (e.g. on
23 our home page)."

24 Q. Was that a new policy that you implemented as of the date
25 of this blog post?

N4RKCHA1

Finzer - Direct

1 A. Yes.

2 Q. Why, from a business perspective, did you decide to
3 implement this new policy?

4 A. We wanted to be very clear so that employees wouldn't --
5 would not be worried about whether or not they could purchase
6 something. So we had a more -- a broader policy, that
7 basically just informed employees not to purchase anything from
8 the home page, as sort of an additional safeguard.

9 Q. I just want to understand what this policy that's
10 highlighted applies to.

11 Does it apply to purchases of featured NFTs after they
12 are featured on the home page, like while they are featured on
13 the home page?

14 A. Yes.

15 MS. NICHOLS: We can take down that highlighting,
16 please, and then highlight the second bullet point.

17 Q. Could you read this one, Mr. Finzer?

18 A. "OpenSea team members are prohibited from using
19 confidential information to purchase or sell any NFTs, whether
20 available on the OpenSea platform or not."

21 Q. Now, is this a new policy, Mr. Finzer?

22 A. No. This is more of a specification of an existing policy
23 that was more general.

24 Q. What do you mean by that?

25 A. This second bullet point is talking about not using

N4RKCHA1

Finzer - Direct

1 confidential information to purchase or sell NFTs, which was
2 already covered in the CIIAA, but this is just being more
3 specific that confidential information should not be used for
4 that purpose.

5 THE COURT: Can you just remind us or explain what you
6 mean by CIIAA?

7 THE WITNESS: The confidentiality invention -- or,
8 sorry, I can't remember what it stands for, but the agreement
9 that Nate signed with the company.

10 THE COURT: Government Exhibit 214 that we started
11 this morning talking about?

12 THE WITNESS: Correct, yes.

13 BY MS. NICHOLS:

14 Q. Mr. Finzer, why, from a business perspective, did you
15 decide to announce this policy in your blog post, if it wasn't
16 new?

17 A. We wanted to inform the community that we had clear
18 policies about buying and selling NFTs.

19 MS. NICHOLS: No further questions, your Honor.

20 THE COURT: Cross-examination?

21 MR. MILLER: Yes, Judge.

22 May I inquire?

23 THE COURT: You may.

N4RKCHA1

Finzer - Cross

1 CROSS-EXAMINATION

2 BY MR. MILLER:

3 Q. Good morning, Mr. Finzer.

4 A. Good morning.

5 Q. We've never met before, right?

6 A. Correct.

7 Q. And while we haven't met, you have been interviewed by the
8 government, I think, five times since last year; is that right?

9 A. I'm not sure exactly how many times.

10 Q. You started to meet with them in or about March of 2022?

11 A. That sounds like around the right time, but I'm not
12 entirely sure when.

13 Q. Thank you.

14 And then you've met with them a couple of times in the
15 last few weeks, right?

16 A. Correct.

17 Q. And you met with them last Thursday, on April 20th?

18 A. I don't recall the specific date.

19 Q. Did you meet with them yesterday?

20 A. No.

21 Q. Did you speak with them on the phone yesterday?

22 A. No.

23 Q. Did you speak with them by video yesterday?

24 A. No.

25 Q. Was there any other way that you had any contact with the

N4RKCHA1

Finzer - Cross

1 government yesterday?

2 THE COURT: Aside from testifying in court?

3 MR. MILLER: Yes, obviously.

4 THE WITNESS: No. I just want to note that I did talk
5 to my lawyers yesterday.

6 BY MR. MILLER:

7 Q. Okay.

8 You met Mr. Chastain through an investor in OpenSea,
9 correct?

10 A. Yes.

11 Q. And you had never met Mr. Chastain prior to that, true?

12 A. True.

13 Q. When you were introduced to him, it was to interview him
14 and evaluate his candidacy as a product manager at OpenSea,
15 right?

16 A. Correct.

17 Q. And Mr. Chastain, in fact, started in a trial period before
18 being brought on as a full-time employee, right?

19 A. Correct.

20 Q. That trial period was in or about January of 2021, right?

21 A. I'm actually not sure because I do remember -- I seem to
22 recall there being a gap between the trial period and the start
23 date, but my recollection could be wrong.

24 Q. Okay.

25 MR. MILLER: Permission, your Honor, to publish

N4RKCHA1

Finzer - Cross

1 GX 215, that's already in evidence?

2 THE COURT: Granted.

3 BY MR. MILLER:

4 Q. So this is what was in evidence.

5 MR. MILLER: If we could scroll down a little bit so
6 the witness can see it and then go back up. You can go back
7 up, Mr. Berk.

8 Q. And this was the offer letter to Mr. Chastain, right?

9 A. It looks like that, yes.

10 Q. It was dated January 28th?

11 A. Yes.

12 Q. And his trial period would have happened before that point,
13 correct?

14 A. I believe so, yeah.

15 Q. Now, during Mr. Chastain's --

16 MR. MILLER: You can take that down.

17 Q. During Mr. Chastain's employment, he reported directly to
18 you, true?

19 A. Yes.

20 MR. MILLER: Let's put back, with your Honor's
21 permission, GX 215, that we just showed.

22 THE COURT: You may.

23 MR. MILLER: Thank you.

24 Let's scroll down, if we can, for a little bit,
25 Mr. Berk. Thank you.

N4RKCHA1

Finzer - Cross

1 BY MR. MILLER:

2 Q. Now, this document set forth his annual compensation,
3 right?

4 A. Yes.

5 Q. And it also set forth how he would be eligible for stock
6 options as part of his compensation plan, correct?

7 A. Yes.

8 Q. And I think it says, in paragraph 3, that the equity award
9 involved would cover 49,011 shares.

10 Do you see that?

11 A. Yes.

12 Q. And those options, at the time, constituted about
13 0.5 percent of the company, correct?

14 A. I'm not sure, actually.

15 Q. Isn't it true, Mr. Finzer, that as of OpenSea's July 2021
16 funding raise, the company was valued as being worth
17 approximately \$1.5 billion?

18 MS. NICHOLS: Objection.

19 THE COURT: Sustained.

20 Q. Now, when Mr. Chastain resigned in September of 2021, that
21 was about nine months into his employment, right?

22 A. Yes.

23 Q. And as a consequence of his resignation, he hadn't met the
24 12-month anniversary for vesting, true?

25 A. True.

N4RKCHA1

Finzer - Cross

1 Q. So he lost the right to those shares, correct?

2 A. It depends how you frame it. There was -- you don't really
3 have the right until you're vested to have the shares.

4 Q. But he no longer had that right once he left, right?

5 A. Yes.

6 Q. And those shares that he would have had, if they vested
7 according to the schedule, those shares went back to the
8 company, true?

9 A. Yes.

10 Q. Now, once Mr. Chastain started, you interacted with him
11 pretty frequently at work, right?

12 A. Yes.

13 Q. And I believe you testified on direct examination that you
14 and Mr. Chastain had conversations every day over Slack
15 messaging, right?

16 A. Yes. Almost every day is my guess.

17 Q. And you two worked in close proximity if you were
18 ultimately in an office, right?

19 A. Yes.

20 Q. And many of your conversations were about issues or topics
21 that somehow related to working at OpenSea, true?

22 A. Yes.

23 Q. You also saw Mr. Chastain occasionally outside of work,
24 right?

25 A. Yes.

N4RKCHA1

Finzer - Cross

1 Q. You even went to a few NFT community-related events
2 together, true?

3 A. Yes.

4 Q. You even went for runs together a couple of times, right?

5 A. Yes.

6 Q. Safe to say you and Mr. Chastain were friends?

7 A. Yes.

8 Q. In terms of Mr. Chastain's work at OpenSea, it's also fair
9 to say that he came up with a lot of good ideas while he was
10 there, right?

11 MS. NICHOLS: Objection.

12 THE COURT: Sustained.

13 Q. Is it fair to say, sir, that when Mr. Chastain was there
14 and working as a product manager, that he proposed several
15 ideas with respect to the website?

16 A. Yes.

17 Q. Did you approve those ideas?

18 A. We don't have an internal process that is specifically
19 around approving things, but, implicitly, I agreed with some of
20 the changes to the website.

21 Q. And Mr. Chastain worked hard at OpenSea, right?

22 MS. NICHOLS: Objection.

23 THE COURT: Sustained.

24 Q. How would you characterize Mr. Chastain's work ethic?

25 MS. NICHOLS: Objection.

N4RKCHA1

Finzer - Cross

1 THE COURT: Sustained.

2 BY MR. MILLER:

3 Q. So when you hired Mr. Chastain, OpenSea was a very small
4 company, right?

5 A. Correct.

6 Q. It was less than ten employees?

7 A. I believe so.

8 Q. Isn't it true that OpenSea didn't have actually an office
9 space when Mr. Chastain was hired?

10 A. I can't recall when we got our office space.

11 Q. OpenSea's parent company was Ozone Networks, right?

12 A. The company itself is called Ozone Networks, but it's not a
13 parent company.

14 Q. Gotcha.

15 And the address for Ozone Networks was a studio
16 apartment on 24th Street, true?

17 A. That sounds reasonable.

18 Q. That was your apartment, right?

19 A. Potentially, yeah. It was on 24th Street, yes.

20 Q. OpenSea didn't have a general counsel when Mr. Chastain was
21 hired, correct?

22 A. No, but we used outside counsel.

23 Q. In fact, OpenSea didn't have a general counsel until August
24 of 2021; isn't that true?

25 MS. NICHOLS: Objection.

N4RKCHA1

Finzer - Cross

1 THE COURT: Overruled.

2 THE WITNESS: I'm not sure exactly when the date that
3 our general counsel joined, but you're correct that we did not
4 have a general counsel when Nate joined.

5 THE COURT: You said earlier you had outside counsel.
6 Can you explain what you mean by that?

7 THE WITNESS: Yeah. So outside counsel is a legal
8 team and lawyers that we work with that work for an outside
9 firm.

10 BY MR. MILLER:

11 Q. In fact, eventually you hired Ms. Moon as your general
12 counsel?

13 A. Yes.

14 Q. And she, in fact, only started a few weeks before the
15 incident that we're here to discuss, correct?

16 A. I'm not sure of the exact timing, but that sounds about
17 right.

18 Q. OpenSea didn't have a head of human resources when
19 Mr. Chastain was hired, right?

20 MS. NICHOLS: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Not -- no, we did not.

23 BY MR. MILLER:

24 Q. And it wasn't until around the time of this incident that
25 OpenSea hired a head of human resources, true?

N4RKCHA1

Finzer - Cross

1 A. I don't recall when we hired our head of HR.

2 Q. Now, when employees are hired today, OpenSea discusses its
3 mission statement with each new hire, correct?

4 A. Yes.

5 Q. But at the time Mr. Chastain was hired, OpenSea hadn't
6 instituted that practice, right?

7 A. Correct.

8 Q. And OpenSea's corporate values were only, in fact,
9 formalized in documents and on the website within the last
10 year, true?

11 A. We've had corporate values for a while, including ones on
12 the website, I believe, when Nate was at the company, but we
13 did revamp our corporate values in recent years, such that
14 they're more formalized now.

15 MR. MILLER: With the Court's permission, I'd like to
16 publish GX 214, that's in evidence.

17 THE COURT: You may.

18 Q. Mr. Finzer, we've obviously heard some testimony today and
19 at the end of yesterday from you about this document.

20 Do you recall that?

21 A. Sorry, would you repeat that?

22 Q. Sure.

23 We've heard some testimony from you about this
24 document today at the end of yesterday, correct?

25 A. Yes.

N4RKCHA1

Finzer - Cross

1 Q. Now, you testified that you obtained this document from a
2 service, right?

3 A. Correct.

4 Q. And that service is called Clerky, right?

5 A. Yes.

6 Q. And this was a template that they provided to people who
7 subscribed to their service, true?

8 A. Yes.

9 Q. And you personally didn't modify this template, correct?

10 A. No.

11 Q. Now, on page 1, the agreement contains a section titled,
12 "Confidential Information."

13 Do you see that?

14 A. Yes.

15 Q. And 2(a) says, "Protection of information."

16 Do you see that?

17 A. Yes.

18 Q. And let's go to 2(b) under "Confidential Information."

19 That states -- and this first sentence I think you
20 read for the jury, right, that's past (b), confidential
21 information, do you see that sentence? It begins I understand.

22 A. Yes.

23 Q. Thank you.

24 Okay. Well, let's go now to the second sentence,
25 "Confidential information includes without limitation."

N4RKCHA1

Finzer - Cross

1 Do you see that sentence?

2 A. Yes.

3 Q. And then there's a list of things that are included,
4 without limitation, correct?

5 A. Yes.

6 Q. And if we go to the top of the next page -- well, first,
7 let's go back to the beginning of that.

8 Do you see how it says, under romanette ii, you see
9 technical data?

10 A. Yes.

11 Q. Trade secrets?

12 A. Yes.

13 Q. Know-how?

14 A. Yes.

15 Q. And if we go to the top of the next page, you see it says,
16 "Biological Materials"? Do you see that?

17 A. Yes.

18 Q. Does OpenSea deal in biological materials?

19 A. No.

20 Q. Mask works; do you see that?

21 A. Yes.

22 Q. Does OpenSea deal in mask works?

23 A. No.

24 Q. And also laboratory notebooks on this line.

25 Does OpenSea deal with laboratory notebooks?

N4RKCHA1

Finzer - Cross

1 A. No.

2 Q. And this list doesn't include anything about NFTs, right?

3 A. No.

4 Q. And you don't recall having discussions with Mr. Chastain
5 about this agreement during his employment at OpenSea, right?

6 A. I don't.

7 Q. And during Mr. Chastain's tenure, OpenSea didn't require
8 employees to take any course regarding employee confidential
9 information, right?

10 A. Not that I recall, no.

11 Q. It didn't require employees to watch any videos on the
12 subject, either, during his tenure?

13 A. No.

14 Q. And during Mr. Chastain's tenure, OpenSea didn't distribute
15 any training materials as to confidential information, right?

16 A. Not that I recall, but it is possible that there were more
17 training materials, generally, as the company started to grow,
18 but not that I recall.

19 Q. Okay.

20 And during Mr. Chastain's employment, OpenSea never
21 conducted an evaluation of employees' knowledge of the
22 confidential information listed here?

23 A. Not that I recall, no.

24 Q. You personally, sir, never held any formal training
25 sessions discussing confidential information, right?

N4RKCHA1

Finzer - Cross

1 A. No.

2 Q. And, to your knowledge, during Mr. Chastain's tenure, no
3 one that you know of at OpenSea or anyone else provided any
4 such formal training sessions to employees on confidential
5 information, true?

6 A. Not to my knowledge. But, again, as we grew, there may
7 have been more general trainings.

8 Q. You mentioned, as you grew.

9 How many employees did you have in or around
10 January 2021, when Mr. Chastain started?

11 A. In January of 2021, I believe it was less than ten
12 employees.

13 Q. So you're familiar with OpenSea's featured artist section
14 on the home page, right?

15 A. Yes.

16 Q. That was a spot, as you talked about on direct examination,
17 where OpenSea would display a particular artist's NFTs, right?

18 A. A single NFT, yes.

19 Q. And you testified that that featured artist would
20 periodically change, right?

21 A. Yes.

22 Q. And OpenSea didn't always have a featured artist section,
23 true?

24 A. True.

25 Q. And it was Mr. Chastain that came up with the idea for a

N4RKCHA1

Finzer - Cross

1 featured artist page, right?

2 A. I believe so, though there were a couple of people that
3 were bouncing around those sorts of ideas, but I believe it was
4 Mr. Chastain.

5 Q. And that was at some point in or around mid-2021, correct?

6 A. That sounds right.

7 Q. And you thought the idea was a good one, right?

8 A. Yes.

9 Q. Mr. Chastain was in charge of selecting which artist would
10 be featured, right?

11 A. Yes.

12 Q. Mr. Chastain decided when he would feature the artist,
13 correct?

14 A. Yes.

15 Q. Now, OpenSea makes money by taking a 2.5 percent fee of
16 each NFT sale completed on the platform, correct?

17 A. Correct.

18 Q. That was true in 2021 as well, right?

19 A. Yes.

20 Q. That fee, that 2.5 percent fee, it doesn't change based on
21 which NFT is sold, does it?

22 A. There are a few situations, and there were a few
23 situations, where the fee would be lowered, but for the most
24 part, it was 2-1/2 percent.

25 Q. And that holds true, the 2.5 percent fee for the featured

N4RKCHA1

Finzer - Cross

1 NFTs, right?

2 A. Yes.

3 Q. In 2021, the 2.5 percent fee, that was OpenSea's primary
4 source of revenue stream, right?

5 A. Yes.

6 Q. Prior to the incident with Mr. Chastain, you had not
7 thought about whether the selection of the featured artist was
8 confidential, correct?

9 A. No.

10 Q. Not correct or you had not?

11 A. I hadn't thought explicitly about whether it was
12 confidential information.

13 Q. And in terms of which featured artists were selected by
14 Mr. Chastain, that didn't necessarily make a difference to
15 OpenSea in terms of the fee that it collected, right?

16 A. Correct.

17 Q. Now, in 2021, OpenSea didn't prohibit employees from buying
18 NFTs on the platform, right?

19 A. Correct.

20 I'm sorry, actually, let me clarify. I mean, the
21 policy that we updated, the blog post, did add prohibitions
22 explicitly against purchasing NFTs on the home page.

23 Q. Thank you, sir. I was about to get into that.

24 A. Yeah.

25 Q. So that was in September of 2021, right?

N4RKCHA1

Finzer - Cross

1 A. Correct.

2 Q. Prior to that, there was no restriction about employees
3 buying NFTs on the platform, right?

4 A. Right, no specific restrictions, right.

5 Q. And, in fact, during that time prior to that new policy in
6 September 2021, employees bought and sold NFTs on the platform
7 all the time, right?

8 A. Yes.

9 Q. Mr. Finzer, you even bought and sold NFTs on the platform,
10 right?

11 A. Yeah. Primarily to test the platform.

12 Q. Now, you follow Mr. Chastain on Twitter, right?

13 A. I currently do or I did back then?

14 Q. Well, let's start with 2021.

15 A. I'm actually not sure. It's quite possible.

16 Q. Well, part of Mr. Chastain's duties and responsibilities
17 were to interact with the public over Twitter, right?

18 A. Part of his responsibilities were to ensure that the
19 product developed properly, and part of that was interacting
20 with customers, not specifically over Twitter, but over
21 different channels.

22 Q. Understood.

23 But Twitter was one of the mechanisms by which
24 Mr. Chastain would interact with customers?

25 A. Yes.

N4RKCHA1

Finzer - Cross

1 Q. And, in fact, he would also announce new features that were
2 going to be added to the platform over Twitter, right?

3 MS. NICHOLS: Objection.

4 THE COURT: Overruled.

5 THE WITNESS: He would announce new features? Yes.

6 MR. MILLER: At this time, your Honor, we'd like to
7 show the witness what's been marked for identification – and
8 we'll do it in a group – Defense Exhibits 1, 2, 4, 5, 6, and 8.
9 They're for identification.

10 And if we could just show that to the witness and the
11 parties here.

12 BY MR. MILLER:

13 Q. Take a moment so you have an opportunity to read it. Do
14 not read it out loud, just read it to yourself, please, sir.
15 Thank you.

16 (Pause)

17 A. Yep, I've read them.

18 Q. Thank you, sir.

19 Do you recognize Mr. Chastain's Twitter handle on each
20 of these exhibits?

21 A. Yes.

22 Q. And these were the types of tweets that Mr. Chastain sent
23 out as part of his duties and responsibilities at OpenSea,
24 correct?

25 A. Yes.

N4RKCHA1

Finzer - Cross

1 MR. MILLER: Pursuant to Stipulation 1001, the defense
2 moves Defense Exhibits 1, 2, 4, 5, 6, and 8 into evidence.

3 MS. NICHOLS: Same objection as yesterday, your Honor.

4 THE COURT: Overruled and admitted.

5 MR. MILLER: Thank you, your Honor.

6 (Defendant's Exhibits 1, 2, 4, 5, 6, and 8 received in
7 evidence)

8 MR. MILLER: Let's now -- with your Honor's
9 permission, can we publish to the jury?

10 THE COURT: You may.

11 MR. MILLER: Thank you.

12 BY MR. MILLER:

13 Q. Defense Exhibit 1, let's start with this.

14 So if we could first start at the top, and if you
15 could read out what the Twitter handle FaZe Banks was saying on
16 September 5, 2021.

17 A. "@OpenSea: Guys, is there any way to keep people from
18 sending me stuff? Every morning I wake up to hundreds of
19 pieces of literal trash linked to purchase options, and I don't
20 want it displayed on my OS account. I spend so much time
21 clicking and hiding and clicking and hiding. Please."

22 Q. And there's a response from Mr. Chastain on his Twitter
23 handle Nate.ETH.

24 Do you see that?

25 A. Yes.

N4RKCHA1

Finzer - Cross

1 Q. What does he say?

2 A. "We are going to be building a feature to address this
3 problem."

4 Q. Thank you.

5 MR. MILLER: And if we can go to Defense Exhibit 2, in
6 evidence, with your Honor's permission?

7 THE COURT: You may.

8 MR. MILLER: Thank you.

9 BY MR. MILLER:

10 Q. We see at the top here, dated August 30, 2021, the Twitter
11 posting from Shwaz.

12 Do you see that?

13 A. Yes.

14 Q. Can you read that out, please?

15 A. "Any chance we might be able to sort offers received by
16 price soon? (Thanks for everything you do man!)."

17 Q. Was there a response from Mr. Chastain?

18 A. Yes.

19 Q. Can you read that, please?

20 A. "Yes, very soon - actively being worked on."

21 MR. MILLER: With your Honor's permission, we'd like
22 to publish Defense Exhibit 4?

23 THE COURT: Standing permission for all these.

24 MR. MILLER: Thank you, sir.

25 Defense Exhibit 4, please.

N4RKCHA1

Finzer - Cross

1 BY MR. MILLER:

2 Q. Can you read out what Twitter handle Coffee Bean said on
3 August 30th of 2021?

4 A. "Hi Nate. Have you guys considered AWS or Azure as a new
5 infrastructure? I love OpenSea, but lately the site has been
6 crashing/slow down due to the throughput and may have
7 stabilities issues."

8 Q. And on the same date, what did Mr. Chastain respond?

9 A. "Yes, we are planning on migrating to AWS."

10 Q. What is AWS?

11 A. AWS is Amazon Web Service, which is a hosting platform for
12 websites.

13 Q. And what's your understanding of what Mr. Chastain was
14 saying by migrating to Amazon services?

15 A. Could you repeat the last part?

16 Q. Sure. I'm sorry, I was not near the microphone. My
17 apologies.

18 What's your understanding of what Mr. Chastain was
19 saying in his response here about migrating to Amazon services?

20 MS. NICHOLS: Objection.

21 THE COURT: Sustained.

22 Q. Do you have an understanding as to what Mr. Chastain was
23 saying when he said OpenSea would be migrating to Amazon
24 services?

25 MS. NICHOLS: Objection.

N4RKCHA1

Finzer - Cross

1 THE COURT: Sustained.

2 MR. MILLER: Let's go now to Defense Exhibit 5.

3 BY MR. MILLER:

4 Q. On August 18, 2021 - I'm not going to even attempt to try
5 to pronounce that, Dievardump - can you please read what this
6 user was saying?

7 A. "Can we have royalties shown on collections? As a buyer, I
8 want to know how much royalties a collection is set to. As a
9 creator, I want collectors to know at first look how much
10 royalties I requested. Collectors should not learn royalties
11 amount, only when they sell."

12 Q. Is there a continuation after the picture here in the
13 middle?

14 A. Yeah.

15 "CC@OpenSea @dan_OpenSea @natechastain @xanderatallah,
16 that would be really great to have this information before
17 buying anything."

18 Q. Do you know who the @xanderatallah is?

19 A. That would be Alex Atallah.

20 Q. Sorry, my apologies, you read out what was said, "that
21 would be really great"?

22 A. From Nate?

23 Q. I'm sorry, yeah, please just go on to what Mr. Chastain
24 said. Thank you.

25 A. "We are adding this as we speak - should be in the platform

N4RKCHA1

Finzer - Cross

1 within the next week or so."

2 MR. MILLER: Can we go to Defense Exhibit 6, please.

3 Q. And on September 6, 2021, the Twitter handle Cameron
4 Moulene, what did he or she say.

5 A. "Nate, if I'm repeating the same concept differently, I'm
6 sorry, but a feature that would allow us to simply set an offer
7 minimum would be outstanding. My inbox thanks you in advance."

8 (Continued on the next page)

n4r3cha2

Finzer - Cross

1 Q. What, if anything, did Mr. Chastain respond?

2 A. "This is coming."

3 Q. Finally, Defense Exhibit 8. Can you start with what Smitty
4 was saying on August 31, 2021?

5 A. "Just saw someone accepted a \$19 offer in DAI on their
6 Hirst Currency piece. Sad day for them. At Nate Chastain has
7 there been any talk of a feature to help prevent this, maybe
8 some sort of indicator in red to show the value difference from
9 the floor of the project or last sale."

10 Q. Continue, please.

11 A. So Jonathan Long, "When listing an item, I should be able
12 to select which options you want to select. Does anyone
13 seriously want DAI."

14 Q. Do you know what D-A-I is?

15 A. Yes.

16 Q. What is it?

17 A. It is a cryptocurrency.

18 Q. Then Mr. Chastain's response on August 31, can you read
19 that for the jury, please.

20 A. "We are working on an offer management feature that will
21 likely include this option."

22 Q. So, in the exhibits we just looked at, fair to say
23 Mr. Chastain was discussing different features that OpenSea was
24 building on a platform, right?

25 A. Yes.

n4r3cha2

Finzer - Cross

1 Q. These are new features, right?

2 A. Yes.

3 Q. OpenSea considers information about new features to be
4 important?

5 MS. NICHOLS: Objection.

6 THE COURT: Sustained.

7 MR. MILLER: So let's now take that down. Permission
8 to publish GX 705-A. It's already in evidence, your Honor.

9 THE COURT: Granted.

10 Q. Mr. Finzer, can we start with the top here on August 2,
11 2021, tweet posted by Arch.eth. Do you see that?

12 A. Yes.

13 Q. It says "let's go." And then if you could look at the
14 picture down below, we don't need to necessarily read this all.
15 You can take a read of it and let me know when you're ready.

16 THE COURT: I am going to ask both of you to make sure
17 you keep your voices up for the question or answer as the case
18 may be.

19 MR. MILLER: Yes, your Honor.

20 A. Okay.

21 Q. And the picture NFT middle is in fact a shot of an OpenSea
22 tweet, right on August 2?

23 A. Yes.

24 Q. And a user or excuse me a person named Arya Mularama had
25 been a featured artist on August 2, correct?

n4r3cha2

Finzer - Cross

1 A. Yes.

2 Q. If we can go down below this, there is a posting where it
3 said from Jerseyborn.eth on that date, "Looks like Nate from OS
4 had the jump on everyone else." Do you see that?

5 A. Yes.

6 Q. Below that, there is actually a response from Mr. Chastain
7 at the bottom. Do you see that?

8 A. Yes.

9 Q. What did he say?

10 A. "I just wanted to secure one of these before they all
11 disappeared TBH."

12 Q. Do you recall seeing this tweet back in August of 2021?

13 A. No, I actually don't recall seeing it.

14 Q. As far as you are aware, no one at the company told
15 Mr. Chastain that he shouldn't be buying featured artists,
16 right?

17 A. Not that I'm aware.

18 Q. Now, on September 14, when you found out about
19 Mr. Chastain's actions, you thought that this incident was a
20 relatively small issue; true?

21 A. When I found out about the -- when I saw the tweet?

22 Q. Yeah.

23 A. I wasn't sure about the magnitude of it because I didn't
24 know what had actually happened.

25 Q. Let's then go to the conversation on September 15 that you

n4r3cha2

Finzer - Cross

1 testified about on direct examination. Do you recall that?

2 A. On -- sorry. Oh, the conversation on September 15 with
3 Nate?

4 Q. Yes. That was a conversation during which he was asked to
5 resign; true?

6 A. Yes.

7 Q. During that conversation, isn't it true that you told
8 Mr. Chastain that what you did was a small thing?

9 A. I actually don't recall.

10 Q. Isn't it true that you said to him that you never know how
11 big these things are going to get, like on Twitter?

12 A. I honestly don't recall.

13 Q. On September 16, so the next day, you went on a walk with
14 Mr. Chastain, right?

15 A. Yes.

16 Q. You told Mr. Chastain that asking for his resignation was
17 the hardest decision you ever had to make for the company,
18 right?

19 A. I don't recall whether I said that or not. But it was a
20 hard decision.

21 Q. Mr. Chastain had been a good product manager for the
22 company prior to that, right?

23 MS. NICHOLS: Objection.

24 THE COURT: Sustained.

25 Q. After Mr. Chastain resigned, you wanted to stay in contact,

n4r3cha2

Finzer - Cross

1 true?

2 A. Initially, yes.

3 Q. You thought that you were proud of the work he had done for
4 OpenSea; true?

5 MS. NICHOLS: Objection.

6 THE COURT: Sustained.

7 MR. MILLER: Let's now, if we can show the witness
8 just for identification and just for the witness and the
9 government and the Court, Defense Exhibit 22, please.

10 THE COURT: Question?

11 Q. Do you recognize this?

12 A. Yes.

13 Q. What is it?

14 A. This is a text message I believe from me to Nate on the
15 16th.

16 MR. MILLER: Pursuant to stipulation 1002 and the
17 testimony, we move Defense Exhibit 22 into evidence, your
18 Honor.

19 MS. NICHOLS: We object, your Honor. It's not covered
20 by the stipulation.

21 MR. MILLER: Under authenticity.

22 THE COURT: Objection is overruled. Admitted.

23 (Defendant's Exhibit 22 received in evidence)

24 MR. MILLER: May we publish it, your Honor?

25 THE COURT: You may.

n4r3cha2

Finzer - Cross

1 Q. Sir, this was --

2 THE COURT: Let me also just give a limiting
3 instruction to the jury, that I'm admitting this not for the
4 truth of anything that the e-mail you are about to look at
5 says, but rather as evidence of Mr. Finzer's state of mind. So
6 you may consider it for that purpose and that purpose only.

7 MR. MILLER: Thank you, your Honor.

8 Q. Sir, this is a text that you sent to Mr. Chastain, right?

9 A. Yes.

10 Q. Can you read it, please.

11 A. "It's just a really shitty situation. Really proud of the
12 amazing work you did at OpenSea. Undoubtedly the most
13 difficult call we had to make. If you're up for it, I really
14 want to stay close friends and keep syncing up."

15 Q. Thank you, sir. And at this time in September 2021,
16 OpenSea constitutes approximately 98 percent of the NFT trading
17 in the market, right?

18 A. I don't remember exactly the percentage.

19 Q. But it was the driving force, majority in the market,
20 right?

21 A. Yes.

22 MR. MILLER: Permission to publish DX 18 which is in
23 evidence, your Honor.

24 THE COURT: May I see it? Can you scroll down,
25 please. Granted.

n4r3cha2

Finzer - Cross

1 MR. MILLER: So I believe -- I didn't hear. Did you
2 grant?

3 THE COURT: Yes.

4 MR. MILLER: Thank you so much.

5 Q. So if we can publish DX 18, thank you. If we can start at
6 the top, please. I'm showing you what's been marked as DX 18
7 which is in evidence.

8 Sir, do you see your e-mail at the top?

9 A. Yes.

10 Q. And if we could look at the date that this was sent. Do
11 you see that, September 15, 2021?

12 A. Yes.

13 Q. If we can scroll down now, please. Keep going. Thank you.
14 Make sure you get the bottom there, great.

15 You see at the bottom it says "join Zoom meeting"? Do
16 you see that?

17 A. Yes.

18 Q. This was in fact a calendar invite that had some
19 information about an upcoming Zoom meeting on September 15;
20 true?

21 A. Yes.

22 Q. So if you can, read the top, please.

23 A. "Hop in any time during the half hour to have your
24 questions answered re our new team policy."

25 Q. Then, if you could read beginning "there has been." You

n4r3cha2

Finzer - Cross

1 see that?

2 A. "There has been some news circulating regarding employee
3 purchases of items featured on our home page. If anyone
4 reaches out to you about this issue (press or otherwise),
5 please do not comment. Also, effective immediately, we would
6 like to announce the following policies."

7 Q. Keep going.

8 A. "OpenSea team members may not buy or sell from collections
9 or creators."

10 THE COURT: Slow down.

11 THE WITNESS: Sorry.

12 A. "OpenSea team members may not buy or sell from collections
13 or creators while we are featuring or promoting them, e.g. on
14 our home page; and OpenSea team members are prohibited from
15 using information that is not available to the public to
16 purchase or sell any NFTs, whether available on the OpenSea
17 platform or not. If you have any questions at all, please
18 reach out to me, Devin, and Alex."

19 Q. Devin is you, right?

20 A. Yes.

21 Q. At the top it says in the first sentence, "our new team
22 policy." Do you see that?

23 A. Yes.

24 Q. Then, down below, the a/c priv it says, "Also, effective
25 immediately, we would like to announce the following policies."

n4r3cha2

Finzer - Cross

1 Do you see that?

2 A. Yes.

3 Q. You read the two policies there, the two bullets, right?

4 A. Yes.

5 Q. So, obviously, to be clear, on September 15 of 2021,
6 OpenSea announced employees could no longer buy or sell
7 featured NFTs, right?

8 A. Yes.

9 Q. That was effective immediately?

10 A. Yes.

11 Q. Great.

12 MR. MILLER: With your Honor's permission, we would
13 like to publish GX 228 that's in evidence.

14 THE COURT: Granted.

15 Q. Let me scroll down a little so Mr. Finzer can see it. You
16 can stop there.

17 And this was a blog post that was posted on OpenSea's
18 website, right?

19 A. Correct.

20 Q. And you see on the paragraph beginning, "This is incredibly
21 disappointing," the end of that paragraph says "we have also
22 implemented the following policies." Do you see that?

23 A. Yes.

24 Q. The two bullets are the two bullets we just saw on Defense
25 Exhibit 18 that you rereviewed; true?

n4r3cha2

Finzer - Cross

1 A. I believe so, though I would have to look at them side by
2 side to make sure they match exactly.

3 Q. Okay. Let's do that then. Thank you.

4 MR. MILLER: With your Honor's permission.

5 THE COURT: You may.

6 A. Can you go back to the previous one?

7 There are a few verbal differences, but they are the
8 same in spirit.

9 Q. Thank you. So, now, after Mr. Chastain resigned, you felt
10 in fact there was an opportunity to set the standards and
11 policies around what employees are able to use as confidential
12 at OpenSea, right?

13 A. Would you remind repeating that?

14 Q. After Mr. Chastain resigned, you felt there was an
15 opportunity to set the standards and policies around what
16 employees are able to use as confidential information when they
17 are at OpenSea, right?

18 A. Yes, I felt there was an opportunity to clarify and add to
19 the policies.

20 Q. And by clarifying, we just saw on Defense Exhibit 18 the
21 new policies effective immediately; true?

22 A. As I said before, the first bullet was a brand new policy,
23 and the second bullet was more of a specification -- a specific
24 instance of an existing policy.

25 Q. Let's take a look back at Defense Exhibit 18.

n4r3cha2

Finzer - Cross

1 MR. MILLER: Your Honor's permission to publish again?

2 THE COURT: You may.

3 Q. One thing to clarify at the bottom here, it says, "If you
4 have any questions at all, please reach out to me, Devin and
5 Alex."

6 Do you know "me" to be Gina Moon?

7 A. That's my guess, yes.

8 Q. So, again, looking at the top here, talking about new
9 policies that are effective immediately; true?

10 MS. NICHOLS: Objection. Asked and answered.

11 THE COURT: Sustained.

12 Q. We can take it down.

13 After Mr. Chastain left OpenSea, you in fact tried to
14 help him land a new job, right?

15 MS. NICHOLS: Objection.

16 THE COURT: Overruled.

17 A. I actually -- I don't recall specifically helping him find
18 a new job. But it's possible, yeah.

19 MR. MILLER: Well, let's pull up what's marked as
20 Defense Exhibit 23 for identification. If we can show the
21 witness just that without publishing, and to the government and
22 the Court as well.

23 THE COURT: Okay. Question?

24 Q. Do you recognize this?

25 A. Yes.

n4r3cha2

Finzer - Cross

1 Q. Is this a text?

2 A. Yes.

3 Q. From you?

4 A. Yes.

5 Q. To Mr. Chastain?

6 A. Yes.

7 MR. MILLER: At this time, your Honor, we move it into
8 evidence.

9 MS. NICHOLS: Objection.

10 THE COURT: Overruled. Admitted.

11 (Defendant's Exhibit 23 received in evidence)

12 MR. MILLER: Can we publish Exhibit 23, your Honor?

13 THE COURT: You may.

14 Q. Can you read out this text that you sent to Mr. Chastain on
15 September 16, the day after you had the conversation asking him
16 to resign?

17 A. "Hey Nate, wanted to intro you to Fred Ersham who I think
18 would be good to chat with about future career moves."

19 Q. Who is Fred Ersham?

20 A. Fred Ersham is the co-founder of Coinbase and now a venture
21 capitalist.

22 Q. Coinbase is one of the largest cryptocurrency exchanges in
23 the world; true?

24 MS. NICHOLS: Objection.

25 THE COURT: Overruled.

n4r3cha2

Finzer - Cross

1 A. I believe so, yes.

2 Q. And Mr. Ersham actually led a funding round to OpenSea to
3 the tune of hundreds of millions of dollars, right?

4 MS. NICHOLS: Objection.

5 THE COURT: Overruled.

6 A. Yes. Though that was later.

7 Q. Okay. And by the way, even after the incident that we've
8 been discussing today, Mr. Chastain attended your birthday in
9 October of 2021; true?

10 MS. NICHOLS: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 Q. And isn't it true that there were a number of people there?

14 A. There were -- can you say that again?

15 Q. Isn't it true at your birthday there was more than just you
16 and Mr. Chastain, right?

17 A. Yes.

18 Q. It's true Mr. Atallah was there; true?

19 A. I believe so, yes.

20 Q. Let's talk about buying NFTs.

21 You know what a hot wallet is, right?

22 A. Yes.

23 Q. What is it?

24 A. It's a wallet that is used for frequently making purchases
25 or transferring items.

n4r3cha2

Finzer - Cross

1 Q. What is a cold wallet?

2 A. A cold wallet is typically a wallet that is not connected
3 to the internet.

4 Q. Earlier you recall I asked you some questions about people
5 at OpenSea trading on the platform in NFTs. Do you recall
6 those questions?

7 A. Yes.

8 Q. You, sir, bought and sold NFTs on the platform, right?

9 A. Yes.

10 Q. And you did it more than just a test. Sometimes you made a
11 profit off of it, right?

12 MS. NICHOLS: Objection.

13 THE COURT: Sustained.

14 Q. What were some of the reasons, Mr. Finzer, why you bought
15 and sold NFTs on the platform?

16 MS. NICHOLS: Objection.

17 THE COURT: Sustained.

18 Q. Sir, you own more than one wallet, right?

19 MS. NICHOLS: Objection.

20 THE COURT: Sustained.

21 Q. Let's talk about the OpenSea platform.

22 You are aware that Mr. Chastain had more than one
23 profile on OpenSea, right?

24 A. I wasn't made explicitly aware of it, but I wouldn't have
25 been surprised if I had found out earlier that he had multiple

n4r3cha2

Finzer - Cross

1 wallets. It wasn't a common --

2 THE COURT: Keep your voice up.

3 THE WITNESS: Sorry.

4 Q. In terms is of your addresses, you have an address called
5 Fincho and one called Wanderer 2, right?

6 MS. NICHOLS: Objection.

7 THE COURT: Sustained.

8 MR. MILLER: I'd like to show you what's in evidence
9 with the Court's permission to publish GX 211.

10 THE COURT: You may.

11 Q. If we can scroll down, this is a newsletter that would be
12 sent out by OpenSea, right?

13 A. Yes.

14 Q. You see where it talks about Polygon trading? Do you see
15 that?

16 A. Yes.

17 Q. What is Polygon?

18 MS. NICHOLS: Objection.

19 THE COURT: Overruled.

20 A. Polygon is a blockchain.

21 Q. And did there come a time where it was integrated with
22 OpenSea?

23 A. Yes.

24 Q. And that was in or around February of 2021, right?

25 A. I don't recall. But that's possible.

n4r3cha2

Finzer - Cross

1 Q. And the blockchain is publicly viewable, right?

2 A. Yes.

3 Q. And the company that developed the Polygon blockchain
4 actually instituted their own cryptocurrency token called
5 MATIC, right?

6 MS. NICHOLS: Objection.

7 THE COURT: I'll allow it. Go ahead.

8 A. Oh. Yes.

9 Q. And we talked earlier -- we should keep this up. We talked
10 earlier about how Mr. Chastain started as a trial employee
11 before he came on full-time at the end of January of 2021. Do
12 you recall that?

13 A. Yes.

14 Q. And Mr. Chastain in fact was involved with you in the MATIC
15 or Polygon integration on to OpenSea, right?

16 A. Yes.

17 Q. And in January, you even approved, Mr. Finzer, some code
18 regarding the Polygon blockchain project for OpenSea?

19 MS. NICHOLS: Objection.

20 THE COURT: Very briefly, can you explain where we're
21 going with this?

22 MR. MILLER: Can we have a sidebar?

23 THE COURT: Yes.

24 (Continued on next page)

25

n4r3cha2

Finzer - Cross

1 (At the sidebar)

2 MR. MILLER: I promise, Judge, I am not on some sort
3 of frolicking detour.

4 We would like to elicit testimony from Mr. Finzer that
5 in early January, he essentially approved the Polygon MATIC
6 blockchain, launching it on to OpenSea, which it did a month
7 later. And at that time, he bought MATIC tokens, which was the
8 company that actually instituted that blockchain and that
9 OpenSea incorporated, and he bought those tokens before it was
10 integrated. And as a result of the public announcement in
11 February, when people started to learn about it, the price of
12 those tokens shot up.

13 MR. FILOR: And he as the founder of the company, he's
14 setting the standards that people were seeing what's happening.
15 He is the one applying the rules and setting the standards.

16 THE COURT: But he is not on trial here for insider
17 trading or anything of that nature.

18 MR. FILOR: But the defendant is seeing, he is
19 modeling his behavior so he can understand the rules, so he can
20 behave the way he is behaving under the supervision of his
21 boss.

22 THE COURT: Is there going to be any suggestion or
23 evidence that Mr. Chastain was aware of this conduct?

24 MR. MILLER: I mean, it's on the blockchain.

25 THE COURT: That's not an answer to my question.

n4r3cha2

Finzer - Cross

1 MR. MILLER: Understood. There is, we were planning
2 to use it for impeachment potentially, but there is an e-mail
3 in which Mr. Chastain is on regarding the MATIC incorporation.

4 MS. NICHOLS: Your Honor, this information, if true,
5 does not bear on the issues at trial here. OpenSea is not on
6 trial and neither is Mr. Finzer. And the Court has already
7 ruled in connection with the government's 404(b) motion that
8 the particular issues here with respect to what is confidential
9 and what is not confidential does not have to do with other
10 aspects of OpenSea's business. The Court has already given the
11 defense a lot of leeway in that regard, with the four or five
12 exhibits that they entered with respect to the defendant's
13 tweets. But none of those tweets, and this evidence -- and
14 just as this evidence has nothing to do with whether the
15 featured home page information was confidential.

16 MR. MILLER: If I might, your Honor. As my colleague
17 Mr. Filor mentioned, Mr. Finzer has spent a lot of time, as did
18 Mr. Atallah, talking about what their intention was about the
19 confidentiality provision. And they intended certain
20 information to be kept confidential. At the same time, there's
21 evidence here that Mr. Finzer essentially misused that
22 provision to essentially engage in trading of those tokens
23 prior to their announcement.

24 THE COURT: The objection is sustained. I'm not going
25 to allow you to go there. Number one, to the defendant's

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Finzer - Cross

1 knowledge, there is no evidence that's been proffered he was
2 actually aware of this. The mere fact it was on the public
3 blockchain does not substantiate that. If there were a proffer
4 made of evidence that would come later to that effect, then it
5 might be different. But there hasn't been.

6 Otherwise, I think this is akin to my 404(b) ruling.
7 This is totally different information. OpenSea is not on
8 trial. Mr. Finzer is not on trial. I think this is unfair and
9 prejudicial in the sense it will just smear him and make him
10 look bad and doesn't speak to the issues in this case. It
11 would be a folio and detour as you put it.

12 So the objection is sustained. We'll move on.

13 (Continued on next page)

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N4r3cha2

Finzer - Redirect

1 (In open court)

2 THE COURT: Sorry for the interruption, ladies and
3 gentlemen. We will continue. The objection is sustained.

4 BY MR. MILLER:

5 Q. Mr. Finzer, OpenSea has the power to suspend users,
6 correct?

7 A. In the sense that we can prevent users from connecting
8 their wallet to OpenSea, yes.

9 Q. You can suspend them, for example, if a user violates
10 OpenSea's terms of service?

11 A. Yes.

12 Q. Or another policy?

13 A. Yes.

14 Q. OpenSea has suspended or banned users from its platforms
15 before, right?

16 A. Yes.

17 Q. Mr. Chastain hasn't been banned from the platform at this
18 time; isn't that correct?

19 A. I'm actually not sure.

20 MR. MILLER: One moment, your Honor.

21 No further questions.

22 THE COURT: Any redirect?

23 MS. NICHOLS: Yes, your Honor.

24 REDIRECT EXAMINATION

25 BY MS. NICHOLS:

N4r3cha2

Finzer - Redirect

1 Q. Mr. Finzer, why was asking for Mr. Chastain's resignation a
2 difficult decision for you?

3 A. It was difficult because Nate had contributed a lot to the
4 company.

5 Q. Was it difficult for you on a personal level?

6 A. Yes.

7 Q. Why?

8 A. Because I considered Nate a friend.

9 Q. Do you recall being asked on cross-examination about an
10 instant message or a text message that you had sent to
11 Mr. Chastain after he resigned?

12 A. Yes.

13 Q. But Mr. Miller didn't show you the text message that you
14 were responding to, did he?

15 MR. MILLER: Objection.

16 THE COURT: Sustained.

17 Q. You were only shown one text message, right?

18 A. Yes.

19 MS. NICHOLS: Mr. Bianco, can we please pull up what's
20 been marked for identification as Government Exhibit 613. Can
21 you please scroll to the second page of this. Can we zoom in
22 so it's easier to read.

23 Q. Mr. Finzer, just read that to yourself.

24 A. It is the same text.

25 Q. Thank you.

N4r3cha2

Finzer - Redirect

1 MS. NICHOLS: We can zoom out, Mr. Bianco. Can we go
2 to the first page, and can we zoom in on the green part.

3 Q. Do you recognize what's on the first page, Mr. Finzer?

4 A. Yes.

5 Q. What is it?

6 A. This is a text from Nate to me.

7 MS. NICHOLS: The government offers 613.

8 MR. MILLER: No objection.

9 THE COURT: Admitted.

10 (Government's Exhibit 613 received in evidence)

11 Q. Now that everyone can see it, Mr. Finzer, what did Mr. --

12 MR. MILLER: Objection.

13 THE COURT: Overruled. You may publish.

14 MS. NICHOLS: Thank you, your Honor.

15 Q. What did Mr. Chastain say to you, Mr. Finzer?

16 A. You want me to read the text message?

17 Q. Yes, please.

18 A. "I'm so sorry for putting you through this."

19 Q. Can we go to the next page, your response. How would you
20 characterize your response? Would you say you had your friend
21 hat on or your CEO hat on when you sent this?

22 MR. MILLER: Objection.

23 THE COURT: Overruled.

24 A. Friend hat or CEO hat on?

25 Q. Yes.

N4r3cha2

Finzer - Redirect

1 A. I'm not really sure. I certainly had my friend hat on.

2 Q. We can take that down.

3 You were asked questions on cross-examination about
4 tweets that Mr. Chastain sent from his personal Twitter
5 account. Do you recall those questions?

6 A. Yes.

7 Q. Just remind us, did OpenSea also have a Twitter account at
8 the time that Mr. Chastain worked at the company?

9 A. Yes.

10 Q. How did Mr. Chastain's job as head of product relate to, if
11 at all, interacting with folks on Twitter?

12 A. Well, part of his job was to set the direction of the
13 product. So that involved getting feedback from customers and
14 better understanding our customer, and one way that was done
15 was through Twitter.

16 Q. Can we please pull up what's in evidence as Defense Exhibit
17 2.

18 Mr. Finzer, when Mr. Chastain wrote "Very soon,
19 actively being worked on," was he violating OpenSea's
20 confidentiality agreement?

21 MR. MILLER: Objection.

22 THE COURT: I'll allow it. In your judgment, was he
23 violating the confidentiality agreement when he wrote that
24 tweet?

25 THE WITNESS: No.

N4r3cha2

Finzer - Redirect

1 Q. Was he disclosing secret or confidential OpenSea
2 information?

3 MR. MILLER: Same objection.

4 THE COURT: Overruled.

5 A. It's hard for me to say, because -- I'm not sure.

6 Q. Let me ask you this. I think you said that interacting
7 with users on Twitter was part of his job. Is that right?

8 A. Yes.

9 Q. So how, if at all, did this tweet relate to his job?

10 A. He was messaging or responding to a user that was asking
11 when a new feature might be coming.

12 Q. By feature, you are not saying the same thing as the
13 featured NFTs, just to be clear?

14 A. Correct.

15 Q. What do you mean when you say "feature" in this context?

16 A. I mean a new element of the website that was coming.

17 MS. NICHOLS: We can take that down.

18 Q. Mr. Finzer, what is the product at OpenSea?

19 A. The product is a website that allows you to buy and sell
20 NFTs.

21 Q. So it's the website itself, not a particular item for sale
22 on the website; is that right?

23 A. Correct.

24 MS. NICHOLS: Can we please pull up Government Exhibit
25 214.

N4r3cha2

Finzer - Redirect

1 Q. Mr. Finzer, do you recall -- can we zoom in, Mr. Bianco, on
2 paragraph 2(b) which breaks over the page, so can we try to get
3 the whole thing.

4 Mr. Finzer, do you recall being asked some questions
5 by Mr. Miller on cross-examination about some of the examples
6 that are in this sentence that begins "Confidential information
7 includes, without limitation," and then there is a number of
8 examples?

9 A. Yes.

10 Q. Did Mr. Miller ask you about all the examples in this
11 paragraph?

12 A. No.

13 Q. So let's just read a few more, and I am going to see if I
14 can highlight it, maybe.

15 So he asked you about trade secrets and know-how, if
16 I'm remembering right.

17 A. I actually don't remember if I talked about those specific
18 ones.

19 Q. Can you read the part that I just highlighted in blue
20 there?

21 A. "Product or service ideas."

22 Q. I am going to highlight one more. Can you read that one?

23 A. "Marketing plans."

24 Q. And again, are these all of the types of confidential
25 information that could exist or are these just a list of

N4r3cha2

Finzer - Redirect

1 examples?

2 A. Just a list of examples.

3 MS. NICHOLS: Can we clear the highlighting and zoom
4 out, please, Mr. Bianco.

5 Q. Mr. Finzer, do you recall being asked questions on
6 cross-examination about trainings that OpenSea conducted at
7 various times?

8 A. Yes.

9 Q. Do you recall being asked whether OpenSea had ever, during
10 the time that Mr. Chastain was at the company, conducted an
11 evaluation of employees' knowledge of the confidentiality
12 agreement?

13 A. I recall being asked that question.

14 Q. Okay. I just want to focus again on this paragraph, we
15 don't have to zoom in, but just this paragraph 2(b), when it
16 says "I understand," who is that a reference to?

17 A. That's a reference to the person signing the
18 confidentiality agreement.

19 Q. Can we scroll down to the signature page, I think it might
20 be page 6 or 8. I think this isn't the right one. That's the
21 exhibit.

22 So who signed this confidentiality agreement?

23 A. Nate.

24 Q. And by signing it, was he affirming he understood it?

25 A. Yes.

N4r3cha2

Finzer - Redirect

1 MS. NICHOLS: We can take that down.

2 Q. Can we please pull up Government Exhibit 705-A.

3 I think you said on cross-examination, Mr. Finzer,
4 that you're not sure whether you'd ever seen these tweets
5 before; is that right?

6 A. Yeah, I hadn't seen that tweet at the time that it was
7 tweeted, as far as I recollect.

8 Q. So I am going to ask you about conversations you had with
9 Mr. Chastain. Did Mr. Chastain ever tell you that he had
10 bought four copies of this featured NFT in an unnamed crypto
11 wallet?

12 MR. MILLER: Objection.

13 THE COURT: Overruled.

14 A. No.

15 Q. Did he ever ask for your permission as the CEO to trade in
16 this featured NFT?

17 A. Not that I recall, no.

18 MS. NICHOLS: Nothing further, your Honor.

19 THE COURT: Any recross?

20 MR. MILLER: No, thank you, your Honor.

21 THE COURT: Mr. Finzer, you may step down. You are
22 excused.

23 (Witness excused)

24 THE COURT: Government, please call your next witness.

25 MR. ROOS: Thank you, your Honor. The government

N4r3cha2

Finzer - Redirect

1 calls Dan Viau.

2 While he's coming in, I will attempt to offer the same
3 series I was botching yesterday. So now, pursuant to
4 government -- pursuant to Government Exhibit 1001, which is a
5 stipulation in evidence, the government offers Exhibits 427 to
6 429 and 431 to 451.

7 THE COURT: Any objection? I assume that's correct.

8 MR. MILLER: No objection, your Honor.

9 THE COURT: Those are admitted.

10 Ladies and gentlemen, that was just to clean up our
11 little confusion yesterday about which of those were admitted.

12 Mr. Viau, if you can step forward, please.

13 (Government's Exhibit 427 to 429, 431 to 451 received
14 in evidence)

15 (Witness sworn)

16 THE COURT: Mr. Viau, my apologies for mispronouncing
17 your name.

18 Can you slide your chair forward, please, and adjust
19 the microphone so you are speaking directly into it since you
20 are a bit taller than the last witness. And just make sure you
21 keep your voice up, loud, clear, into the microphone so
22 everyone can hear you.

23 THE WITNESS: Will do.

24 DANIEL J. VIAU,

25 called as a witness by the Government,

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Viau - Direct

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROOS:

4 Q. Where do you work?

5 A. OpenSea.

6 Q. How long have you worked at that company?

7 A. I joined in October 2018.

8 Q. What's your current role at OpenSea?

9 A. I'm a software engineer.

10 Q. What other roles have you had at OpenSea, besides software
11 engineer?

12 A. Well, when I joined, it was a small company, so we all had
13 a lot of responsibilities. So I had a mix of responsibilities
14 initially, including software engineering and sort of community
15 support type of things. Eventually, I joined the OpenSea legal
16 team, and subsequently went back to engineering.

17 THE COURT: Move the microphone a little closer,
18 please.

19 THE WITNESS: Sure.

20 Q. What are some of the types, speaking very generally, what
21 are some of the types of legal work you did at OpenSea?

22 A. Again, it was a mix of responsibilities, but I did things
23 like contract review, and analysis of different projects for
24 potential terms of service violations and that sort of thing.

25 Q. So are you familiar with any rules that OpenSea has in

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Viau - Direct

1 place for people using the OpenSea marketplace?

2 A. Yes.

3 Q. What are those rules called? You may have said it already.

4 A. We called them the terms of service.

5 MR. ROOS: So now just for the witness, show the
6 witness what's been marked for identification as Government
7 Exhibit 223.

8 Q. There's a binder in front of you. It should also be on the
9 screen in front of you.

10 THE COURT: You can look on the screen or there,
11 whichever.

12 Q. Do you see it?

13 A. I do.

14 Q. Do you recognize that document?

15 A. I do.

16 Q. What is it?

17 A. Those are the OpenSea terms of service from June 2021.

18 MR. ROOS: The government offers Exhibit 223.

19 MR. FILOR: No objection, your Honor.

20 THE COURT: Admitted.

21 (Government's Exhibit 223 received in evidence)

22 MR. ROOS: May we publish it?

23 THE COURT: You may.

24 Q. So starting on the first page. Do these OpenSea terms of
25 service apply to anyone who uses OpenSea?

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Viau - Direct

1 A. Yes.

2 Q. Would that include OpenSea employees using the website?

3 A. Yes.

4 Q. Generally speaking, so give us categories. What types of
5 things do terms of service relate to?

6 A. Terms of service govern the rights and responsibilities of
7 users of OpenSea, and governs relationships between OpenSea and
8 users and among users.

9 Q. What, if any, activities on OpenSea's marketplace do the
10 terms of service prohibit?

11 A. I'm sorry, can you repeat that?

12 Q. Certainly. What, if any, activities on OpenSea's
13 marketplace do the terms of service prohibit?

14 A. We prohibit, among other things, malicious attacks that
15 might disrupt service for other users, we prohibit certain
16 types of behaviors in terms of market participation.

17 Q. So let's look at one of those.

18 Mr. Bianco, can we go to page 7 and zoom in at the top
19 of page 7, where it says number 8, user conduct. And the
20 following -- the paragraph just after it.

21 And sir, would you just read under user conduct the
22 first paragraph.

23 A. Sure. "You agree that you will not violate any law,
24 contract, intellectual property or other third party right, and
25 that you are solely responsible for your conduct, while

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1 accessing or using the service or participating in the auction.

2 You agree that you will abide by these terms and will not."

3 Q. And then below it is there a list of various types of
4 activities?

5 A. Yes.

6 Q. So Mr. Bianco, can we zoom out from here. And I want to
7 look at one of those things on the list. Can we turn to page
8 8.

9 At the top, do you see the sentence that says "engage
10 in wash trading"?

11 A. I do.

12 Q. Why don't you start by reading that sentence for us.

13 A. "Engage in wash trading or other deceptive or manipulative
14 trading activities."

15 Q. And what are some of the types of deceptive or manipulative
16 trading activities that you've observed on OpenSea or other
17 marketplaces?

18 A. Sometimes people will create an NFT that appears to be an
19 original, but is really a copy.

20 Q. Okay. Besides that, have you also observed other types of
21 activities?

22 A. Yes.

23 Q. Let's change topics. We can take this down, Mr. Bianco.

24 Were you working at OpenSea during the period that
25 Mr. Chastain was working there?

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Viau - Direct

1 A. Yes.

2 Q. And did you work with him on a day-to-day basis?

3 A. Yes.

4 Q. Were you friends?

5 A. Yes.

6 Q. Did you interact in your personal lives?

7 A. We had personal conversations at work.

8 Q. By the way, do you recognize the name Jen Sherman?

9 I'm sorry. Liz Sherman?

10 A. I do not.

11 Q. Did there come a time in 2021 when OpenSea began featuring
12 NFTs on its home page?

13 A. To the best of my recollection, yes.

14 Q. Did you have any involvement in the decision to make that
15 change to the website?

16 A. The way I recall it, it was discussed in public Slack
17 channels, but I had no material contribution to the decision
18 whether to add that featured NFT slot to the front page.

19 Q. At a general level, are you familiar with the way or ways
20 in which an NFT was selected to be featured on the front page
21 of the website?

22 A. I believe so, yes.

23 Q. Do you know who selected the NFT to be featured on the
24 front page of the website?

25 A. I believe that it was Nate.

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Viau - Direct

1 Q. You're referring to Mr. Chastain?

2 A. That's correct.

3 Q. Just to be clear, the public Slack channel you're
4 referencing, is that a Slack channel that is public within
5 OpenSea, or a Slack channel open to the general public?

6 A. Yeah, I should clarify. That's a Slack channel that was
7 accessible to the entire OpenSea team, but not accessible to
8 the general public.

9 Q. Where did the ideas for the featured NFT come from, as far
10 as you know?

11 A. My understanding is that we as a company wanted to feature
12 up and coming NFT artists.

13 Q. Do you know where ideas for the particular featured NFT
14 came from?

15 A. I believe that, for the most part, it was sort of an
16 internal process, but we also got suggestions from the general
17 NFT community, and I believe that a colleague of mine named
18 Jonathon Triest may have also contributed suggestions.

19 Q. Why don't we talk about that. Can we please show the
20 witness what's been marked for identification as Government
21 Exhibit 219.

22 Do you recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It is an e-mail exchange between me, Mr. Chastain, and

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Viau - Direct

1 Jonathon Triest.

2 MR. ROOS: The government offers 219.

3 MR. MILLER: No objection.

4 THE COURT: Admitted.

5 (Government's Exhibit 219 received in evidence)

6 MR. ROOS: May we publish it?

7 THE COURT: You may.

8 Q. Mr. Bianco, can we go to the first e-mail in the chain so
9 the e-mail at the bottom. So let's start with this first
10 e-mail.

11 And who is the e-mail from?

12 A. It's from me.

13 Q. And it says "Nate, I'm pleased to introduce Jonathon Triest
14 from Ludlow Ventures."

15 Who is Jonathon Triest?

16 A. Jonathon Triest is a venture capitalist who works at Ludlow
17 Ventures.

18 Q. Okay. And could you read the e-mail.

19 A. Sure. "Nate: I'm pleased to introduce Jonathon Triest
20 from Ludlow Ventures. When he's not managing an incredible
21 portfolio of companies, he spends a lot of time on OpenSea.
22 Jonathon is interested in helping pick artists to feature on
23 the front page. In his words, he wants to help surface the
24 unknown. I'll let him give the full version of the pitch, but
25 I figured you'd welcome input from outside sources. It might

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Viau - Direct

1 even be worth putting together a mini curation board kind of
2 like what Art Blocks has.

3 "Jonathon: I'm pleased to introduce Nate Chastain.
4 Ostensibly, his job is merely to make OpenSea the best product
5 it can be, but he somehow finds way to catch and complete every
6 stray task that the rest of us would otherwise allow to slip
7 through the cracks. One of the many responsibilities that
8 landed on his plate this way is picking the artists that go on
9 the front page. Please let me know what I can do to facilitate
10 the conversation.

11 "Best, Dan."

12 Q. Thank you.

13 Mr. Bianco, can we now scroll up to see the next
14 e-mail in the chain. So looking at the bottom of the front
15 page here, sir, do you see there a response from Jonathon
16 Triest?

17 A. Yes.

18 Q. And he's thanking you for the introduction?

19 A. Yes.

20 Q. And then we can zoom out of that. Mr. Bianco, can you zoom
21 in on the next. And do you recognize this as a response from
22 Nate Chastain?

23 A. Yes.

24 Q. And I am going to ask you on this one, do you see in the
25 response the sentence beginning "some considerations"?

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Viau - Direct

1 A. I do.

2 Q. Would you read that until the end of the e-mail.

3 A. Sure. "Some considerations with these: We try to feature
4 unverified artists, ones that have a clear authorship of the
5 pieces (social media link to work), favor animation, favor
6 semi-fungibles, and favor ones uploaded to OpenSea rather than
7 other marketplaces (Foundation, Rarible, etc.)"

8 Q. Since I asked you to start reading this e-mail halfway
9 through, just to be clear, is the context of this some
10 considerations for which NFT to be featured?

11 A. Correct.

12 Q. Let me ask you about some things in that list. What's an
13 unverified artist at OpenSea?

14 A. An unverified artist would be an artist that hadn't done
15 much following yet and hadn't gained much traction.

16 Q. And another thing in this list is semi-fungibles. What
17 does that mean in the context of OpenSea?

18 A. A semi-fungible is a type of NFT that is more like a
19 lithograph than an original one of one painting. So, it is a
20 non-fungible token where there can be multiple copies of the
21 same token.

22 Q. Okay. Then the last part here says "Favor ones uploaded to
23 OpenSea rather than other marketplaces."

24 Why was there favor towards ones uploaded to OpenSea?

25 A. My understanding is that we preferred to feature NFTs that

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Viau - Direct

1 had been uploaded to OpenSea, because we wanted to promote our
2 own tooling. We wanted to promote the no code solutions for
3 creating NFTs that OpenSea provided, as opposed to promoting
4 those of our competitors.

5 Q. By the way, what does uploaded to OpenSea mean?

6 A. In this context, uploading essentially means creating an
7 NFT. So you input some information, and you take an action
8 that causes an NFT to come into existence.

9 MR. ROOS: We can take this down.

10 Q. Did you have any involvement in the decision of which
11 particular NFT to feature?

12 A. I had no material input on that.

13 Q. Besides Mr. Chastain, are you aware of anyone else who made
14 that selection decision?

15 A. I am aware of no one else who made that selection decision.

16 Q. Did Mr. Chastain ever tell you what NFT he was going to
17 select before it was featured?

18 A. I don't recall any instance of that happening.

19 Q. Was there ever a time that featured NFT was not kept secret
20 prior to being featured?

21 A. I'm not aware --

22 MR. FILOR: Objection.

23 THE COURT: Overruled.

24 A. I'm not aware of any instance of that happening.

25 Q. Do you recall any time when the featured NFT leaked out

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Viau - Direct

1 before it was featured?

2 MR. FILOR: Objection.

3 THE COURT: Overruled.

4 A. I'm not aware of any instance of that happening.

5 Q. When did you first learn which NFT was featured?

6 A. I became aware of that when it appeared on the OpenSea home
7 page.

8 Q. Generally speaking, do people at OpenSea talk about their
9 personal buying and selling of NFTs?

10 A. In general, from time to time, we would discuss our
11 personal purchases, yes.

12 Q. Did you ever talk to Mr. Chastain about his buying or
13 selling of NFTs?

14 A. From time to time, yes.

15 Q. Did he ever tell you he was buying and selling featured
16 NFTs?

17 A. No.

18 Q. I want to direct your attention to September 14, 2021. Do
19 you recall going to a dinner on that day?

20 A. I do.

21 Q. Do you remember sort of where it was in terms of the part
22 of the country or the city?

23 A. My recollection is that it was in Manhattan, southern
24 Manhattan somewhere. I think perhaps Soho.

25 Q. Who was at the dinner that you recall?

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Viau - Direct

1 A. I recall that it was myself, Nate, and our then head of BD,
2 Ryan Foutty.

3 Q. Go ahead.

4 A. I recall there were others there, but I can't remember
5 exactly the cast of characters.

6 Q. What, if anything, was the reason for the dinner?

7 A. My understanding, I don't think there was any particular
8 reason, except we had gathered together more than a handful of
9 OpenSea employees in one spot, and that was usually enough to
10 justify getting a team dinner together.

11 Q. Do you remember seeing anything on Twitter that evening
12 about Nate Chastain?

13 A. I do.

14 Q. What did you see?

15 A. So, I -- when I was going to the bathroom, I was scrolling
16 Twitter. And on the way back, I saw a tweet that alleged that
17 Nate had been purchasing NFTs that would go on to be featured
18 NFTs, and subsequently sell them.

19 Q. Let me show you what's been marked for identification as
20 Government Exhibit -- is it in?

21 What's in evidence as Government Exhibit 706.

22 MR. ROOS: May we publish this to everyone?

23 THE COURT: You may.

24 Q. Mr. Bianco, can you zoom in on the tweet.

25 Sir, are you familiar with this tweet?

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Viau - Direct

1 A. Yes.

2 Q. Can you, Mr. Bianco, fix the highlighting. I am going to
3 ask you to read just the top tweet.

4 A. "Hey OpenSea. Why does it appear Nate Chastain has a few
5 secret wallets that appears to buy your front page drops before
6 they are listed, and then sells them shortly after the front
7 page hype spike for profits, and then tumbles them back to his
8 main wallet with his punk on it?"

9 Q. Then can you read the one below it.

10 A. "Here's one TX" transaction "on returning profits to the
11 main 0XA3A45 wallet after flipping the item currently on the
12 front page."

13 Q. What did you do after you saw this tweet?

14 A. I had it open on my phone, and I walked over to
15 Mr. Chastain, and I showed him the tweet.

16 Q. What did he do?

17 A. I recall that he shook his head from side to side, and said
18 "no."

19 Q. Side to side. Can you demonstrate that for us, what you
20 mean by that?

21 MR. ROOS: So let the record reflect the witness is
22 sort of moving his head back and forth.

23 THE COURT: I would say shaking his head from side to
24 side.

25 MR. ROOS: Thank you, your Honor.

N4r3cha2

Viau - Cross

1 Q. What did you understand that to mean?

2 A. I understood it to be a denial of the truth of the
3 allegation in the tweet.

4 Q. You said he also said the word "no"?

5 A. That's correct.

6 Q. What's do you understand that to mean?

7 A. Similarly, a denial of the truth of the allegation of the
8 tweet.

9 MR. ROOS: No further questions.

10 THE COURT: Cross-examination.

11 MR. FILOR: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. FILOR:

14 Q. Sir, you didn't know what Mr. Chastain meant when he shook
15 his head, right?

16 A. I'm sorry, would you repeat that?

17 Q. You did not know what Mr. Chastain was saying when he shook
18 his head, do you?

19 A. To the extent that it's not possible to know what's in the
20 head of another person.

21 Q. But they asked you to try to put yourself in his head,
22 right?

23 A. Yes.

24 Q. Just now the last question --

25 MR. ROOS: Objection.

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Viau - Cross

1 THE COURT: Sustained.

2 Q. You prepared with the government a few times, right?

3 A. Yes.

4 Q. You knew they were going to ask you that question, didn't
5 you?

6 A. Which question?

7 Q. To interpret what his head shake was when they asked you
8 the question?

9 MR. ROOS: Objection.

10 THE COURT: Overruled.

11 Q. Right?

12 A. Sorry. Would you clarify?

13 Q. Sure.

14 THE COURT: One at a time, gentlemen.

15 MR. FILOR: Certainly, your Honor.

16 Q. When you prepared multiple times with the government, they
17 told you they were going to ask you to interpret that head
18 shake, didn't they?

19 A. They didn't tell me that they were going to ask specific
20 questions here.

21 Q. But when asked the question here, you were willing to
22 interpret the head shake for them, weren't you?

23 MR. ROOS: Objection. Argumentative.

24 THE COURT: Sustained.

25 Q. When you showed your phone to Mr. Chastain that night, did

N4r3cha2

Viau - Cross

1 you think you were showing him that tweet for the first time
2 that he had ever seen it?

3 A. I suspected yes, at the time.

4 Q. Because it just came out, right, while you guys were there?

5 A. I believe so, yes.

6 Q. You don't know what he was saying when he shook his head
7 when he was reading it on your phone, right?

8 A. I recall him saying the word "no" and shaking his head no.

9 Q. That wasn't my question. You didn't know what he meant
10 when he did that, do you?

11 MR. ROOS: Objection. Asked and answered.

12 THE COURT: Sustained.

13 MR. FILOR: Can I approach the witness and provide him
14 with Government Exhibits 214 and 223.

15 THE COURT: Is there a reason we can't show them on
16 the screen?

17 MR. FILOR: I'd like him to page through a couple of
18 them.

19 THE COURT: Okay, you may.

20 Q. Can you look at Government Exhibit 214 first.

21 MR. FILOR: Can we publish for the jury, your Honor?

22 THE COURT: You may.

23 Q. You never spoke with Nate Chastain about this
24 confidentiality agreement that people sign when they join
25 OpenSea, right?

N4r3cha2

Viau - Cross

1 A. May I take a moment to flip through?

2 Q. Please.

3 A. It appears there was an Exhibit 223 at the end of this.

4 This is meant to be just 214, correct?

5 Q. Yes, I handed you both of those. Right now I am asking you
6 to look at the Exhibit 214. I'll get to 223 in a moment.

7 A. Okay.

8 THE COURT: I think the question is, you never spoke
9 with Nate Chastain about the confidentiality agreement that is
10 Government Exhibit 214, did you?

11 THE WITNESS: I don't recall speaking with him about
12 this document.

13 Q. Are you aware that that document was downloaded from a
14 Clerky.com form?

15 MR. ROOS: Objection.

16 THE COURT: Sustained.

17 Q. We can put that one away.

18 If you don't mind picking up Government Exhibit 223.

19 MR. FILOR: Your Honor, if we can publish that for the
20 jury?

21 THE COURT: You may.

22 Q. You were asked about this document on direct, right?

23 A. Yes.

24 Q. You can page through it, but you've seen this before,
25 right?

N4r3cha2

Viau - Cross

1 A. Yes.

2 Q. And this is very detailed, isn't it?

3 A. I believe so, yes.

4 Q. It's 20 pages long?

5 A. It appears that the substance fits on 20 pages, yes.

6 Q. And it goes through in great detail what you wanted users
7 to know about NFTs or non-fungible tokens, right?

8 A. I don't think that this document was intended to educate
9 people about what we wanted to know about NFTs.

10 Q. But it's 20 pages about how users can use the OpenSea
11 platform or should not use the OpenSea platform with respect to
12 buying and selling NFTs, right?

13 A. Yes.

14 Q. If you can turn to page 3. And Mr. Berk, if you can bring
15 up the top of that page. Just the top paragraph there.

16 You wrote that "We encourage you to review the terms
17 frequently to ensure that you understand the terms and
18 conditions that apply." Right?

19 A. I see that text, yes.

20 Q. We can go to page 7, please, Mr. Berk. If you don't mind
21 turning to that page.

22 You were shown this on direct, paragraph 8, about the
23 user conduct, right?

24 A. Yes.

25 Q. And, Charlie, if you can just scroll down slowly, this goes

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Viau - Cross

1 on and on with information, including on to the next page, with
2 lots and lots of detail about how people should behave when
3 they're buying and selling the NFTs, right?

4 A. Yes.

5 Q. And you were asked about one particular paragraph, or one
6 particular line of these pages toward the top, engaging in wash
7 trading or other deceptive or manipulative trading activities.
8 You see that?

9 A. Yes.

10 Q. You are familiar with what Mr. Chastain did in buying some
11 of the NFTs and then selling them?

12 MR. ROOS: Objection. Vague. Time frame.

13 THE COURT: Sustained.

14 Q. You are familiar with the allegations that we're here today
15 to speak about?

16 A. Yes.

17 MR. ROOS: Objection.

18 THE COURT: Too late.

19 Mr. Filor, how much longer do you think you have on
20 cross?

21 MR. FILOR: Maybe an hour or two, your Honor.

22 THE COURT: Okay. Then we'll definitely take our
23 break now being exactly 11:30.

24 Ladies and gentlemen, you know the drill. Don't
25 discuss the case with one another or anyone else for that

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Viau - Cross

1 matter. Don't do any research about the case. Continue to
2 keep an open mind. Making good progress, but certainly haven't
3 heard all the evidence, let alone the parties' arguments or my
4 instructions.

5 Keep an open mind, enjoy your break. Please be ready
6 to go a minute or two before noon. Thank you.

7 (Jury excused)

8 (Continued on next page)

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N4r3cha2

1 THE COURT: Mr. Viau, you are excused for the moment.
2 Because you are on cross-examination you are not allowed to
3 communicate with anyone on the government's side. You can
4 speak with your own lawyer, of course, but let's otherwise
5 leave it there. Please be ready to go a couple minutes before
6 noon. I'll ask counsel just to make sure that there is nothing
7 we're talking about that he can't be present for because there
8 was a few issues about that.

9 You are excused and enjoy your break.

10 THE WITNESS: Thank you.

11 (Witness temporarily excused)

12 THE COURT: Were you serious that you have an hour or
13 two on cross?

14 MR. FILOR: I promise to be done by the end of the
15 day, but I do have a significant amount to cover, your Honor.
16 I'll try to keep it as short as possible.

17 THE COURT: I find that --

18 MR. FILOR: I'll use the break to try to cut as much
19 as possible, but it will be an hour I think.

20 THE COURT: The direct was I think about 10 minutes.
21 Maybe 20 max. Recognizing that you are limited to the scope of
22 the direct, I find it a little hard to imagine how you are
23 going to spend two hours with this witness.

24 MR. FILOR: Your Honor, I apologize, but I thought
25 your Honor's trial practice prefers we ask questions of the

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1 witness when they're called, so they don't have to be recalled
2 in our case.

3 THE COURT: Would you do that? You were going to call
4 him as a witness in your own case?

5 MR. FILOR: I thought I was following your Honor's
6 rules to get everything done today. But I'll keep it as short
7 as possible.

8 MR. ROOS: A few things on this. First, he wasn't on
9 the defense witness list. Second, I think your Honor is
10 absolutely right. Even if they had an intent to call them,
11 they should be constrained by Rule 611(b). And therefore given
12 the fact I asked about three topics over a period of 10 or 15
13 minutes, two of them he's already gone through, it seems like
14 the remainder of this cross should be conducted with
15 non-leading open-ended questions. And probably, to help us
16 move efficiently, it would be useful to hear the topics, since
17 I suspect many of them will be irrelevant or subject to a 403
18 objection, so we can move through this without having to deal
19 with this in front of the jury.

20 THE COURT: Well, why don't you use the break to pare
21 things down. And candidly, I'm inclined to limit you to the
22 scope of cross. And if you want to recall him as part of your
23 case, and you want to make a proffer as to why you would do
24 that, then we can litigate that. Since he wasn't previously
25 mentioned as being on your list, I am not going to let you

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1 abuse that rule, which is intended primarily in civil cases
2 where both parties name a witness and call them to ensure the
3 witness doesn't have to appear twice.

4 MR. FILOR: I apologize if I misinterpreted, your
5 Honor.

6 THE COURT: Apology accepted. Be that as it may,
7 we've got to do this more efficiently than one or two hours.

8 MR. FILOR: I'll keep it briefer, your Honor.

9 THE COURT: Mindful that there is some uncertainty as
10 to how long this cross will be, there were a few open items on
11 Dr. Edman.

12 Can the government give me preview of what is still to
13 come? I think you have a paralegal and also Dr. Taylor.
14 What's your plan?

15 MR. ROOS: So, I think we need to talk to the defense.
16 Yesterday they sort of indicated that even if we don't call
17 Dr. Taylor, they may still call Professor Skinner. I think
18 potentially what they were alluding to has been precluded. But
19 I think if they don't intend to call Professor Skinner, we no
20 longer intend to call Professor Taylor. Which means that
21 whenever the current witness is off cross, we will call our
22 paralegal, read one more stipulation, I guess two more
23 stipulations, and rest.

24 THE COURT: Defense on Dr. Skinner?

25 MR. FILOR: Your Honor, if Professor Taylor is not

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1 going to be called, then we won't call Professor Skinner.

2 THE COURT: Does that mean that Dr. Edman would be
3 your first witness?

4 MR. FILOR: That's correct, your Honor.

5 THE COURT: Then we need to address the Edman related
6 issues at least quickly. Does the defense wish to be heard?

7 MR. MILLER: Yes, your Honor. So, a few things
8 regarding the letter we received from the government last
9 night.

10 First, I think the government misunderstands a little
11 bit what Dr. Edman will do. I'll tart start off by saying we
12 are not going to be offering Exhibits 52 and 53. So that was
13 part of their application. That's moot. That's not an issue.

14 THE COURT: Great.

15 MR. MILLER: I'll tell what you Dr. Edman has done and
16 what he is going to do, and then I want to address the issue of
17 the demonstratives and the 26.2, your Honor.

18 So, first, Dr. Edman with respect to the wallets will
19 do the following. He has relied on and reviewed government
20 exhibits that are now in evidence, including Etherscan records.
21 He is also going to use his expertise in evaluating those
22 records, and from looking at the blockchain, etc., as well as
23 looking at Mr. Chastain's computer and ledger device, to match
24 up that the wallet addresses were either in mostly the Meta
25 Mask wallet, and that one wallet address is in the ledger.

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1 Okay.

2 And in fact, I think it was a little surprising that
3 the government said they don't know anything about this,
4 because they seized Mr. Chastain's laptop in September of 2021,
5 where that information is also housed, where they could
6 actually determine that in fact the wallet addresses were
7 primarily from one wallet, namely a Meta Mask wallet, and in
8 fact OpenSea's records indicate that most of these wallet
9 addresses appear to be from Meta Mask. And there is also on
10 the laptop that they seized and reviewed and produced to us
11 information about the software for the ledger device.

12 So, Dr. Edman, among other things, in his opinion of
13 the testimony, one of the things he'll do is describe exactly
14 what I just proffered to your Honor. So that's the first
15 thing, just to clear up some of the confusion I think the
16 government has with respect to this.

17 THE COURT: Just if I understand it correctly, your
18 representation is his opinion is based on a review of the
19 evidence that the government has already admitted during this
20 trial, and his review of the defendant's laptop?

21 MR. MILLER: That's correct, and I just note the one
22 caveat is the laptop -- the defendant's laptop that he
23 currently has, not the one that was seized, because the
24 software for Meta Mask is something that's housed on the net.
25 And so, all that he did was confirm that the wallet addresses

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1 that the government has provided in discovery were housed
2 within one wallet, namely the Meta Mask wallet, and this other
3 wallet address that, again, the government can see from the
4 laptop they've seized, is from a ledger device. So, that's
5 what he's going to do.

6 And to the extent that there is some kind of hearsay
7 objection that I saw with respect to the videos, respectfully,
8 your Honor, that's a non-issue. Dr. Edman actually reviewed
9 the evidence that, again, the government has a duplicate part
10 of and they can review. Not to mention that 703, as your Honor
11 is well aware, need not require that an expert only review and
12 rely upon admissible evidence.

13 THE COURT: Right. But, just as a followup, is it
14 your representation his testimony is not based on information
15 that he -- and that he doesn't plan to repeat information that
16 Mr. Chastain told him? In other words, it's based on an
17 independent review of essentially the evidence already in, as
18 well as the defendant's laptop? And I'll have a followup
19 question on that score. Is that correct?

20 MR. MILLER: Correct. To describe it a little more
21 fully, I'll tell you exactly what happened. Both Dr. Edman and
22 Mr. Chastain and I were in our offices. Mr. Chastain did not
23 speak to Dr. Edman nor did Dr. Edman speak to Mr. Chastain.
24 And confirmed on Mr. Chastain's laptop, again, the information
25 for which is also duplicated that the government and the FBI

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1 seized and reviewed, that the wallet addresses are linked to
2 this Meta Mask wallet, and that the other address is linked to
3 a cold storage device.

4 THE COURT: I want to try to use our time wisely, so I
5 give you some time off and me as well. And Defense Exhibits 52
6 and 53, I appreciate you are not offering them, but are they
7 reliance materials.

8 MR. MILLER: I mean, Dr. Edman did look at them at one
9 point. But he need not rely upon them now, because of what he
10 did in terms of physically being present.

11 THE COURT: Is he able to and planning to testify that
12 whatever -- I'm not an expert in these matters, but to the
13 extent he looked at Meta Mask or the ledger or whatever the
14 case may be, but it wasn't the laptop that the government
15 seized, is he able to and planning to testify that that
16 reflects, or he can discern from that information at the
17 relevant time period, namely 2021?

18 MR. MILLER: Yes. So what he will say, because I'm
19 sure the government will cross him on this and they're free to
20 do so, of course, is that he can identify through looking at
21 the Etherscan records, looking at documents provided by OpenSea
22 to the government who produced it to us, that most of these
23 addresses have links to a Meta Mask wallet. He will also
24 testify, if asked, that it wouldn't make sense for people to
25 have more than one Meta Mask wallet and create a new Meta Mask

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1 wallet. And as a result, these addresses came from the same
2 Meta Mask wallet that he's seen corroborating evidence for.

3 THE COURT: Does the government wish to respond? It
4 sounds like he's not basing his opinion testimony on
5 information from the defendant, and nor on Exhibits 52 and 53
6 which are not being offered. So recognizing you can obviously
7 object if you think there's an objectionable question, is there
8 anything remaining to be said on that particular issue?

9 MR. ROOS: I guess there is still the question of how
10 these, whatever he looked at, he is attributing to the
11 defendant. Like, if it's a little memory stick defense
12 counsel's handed him, how is he able to testify that the
13 defendant's wallet is this memory stick. The attribution is
14 something that relies on hearsay.

15 MR. MILLER: Again, that's not what happened. So, in
16 terms of, it was in our office, Mr. Chastain booted up his
17 computer. They did not speak. Dr. Edman did not speak to
18 Mr. Chastain, neither did Mr. Chastain speak to Dr. Edman. He
19 booted up his system. He took up the Meta Mask wallet, which,
20 again, is on the laptop that the government seized and they
21 have access to. He looked at it on the screen. He looked at
22 the addresses, confirmed that they are the same addresses that
23 the government has identified and used, including with their
24 summary witness.

25 THE COURT: You are repeating yourself.

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1 MR. MILLER: Sorry, your Honor.

2 THE COURT: I'll have to rule on objections as they
3 come. Suffice it to say he cannot serve as a conduit for
4 hearsay. Obviously to the extent that an expert can rely on
5 hearsay, because it's reliance material, that's one thing. If
6 there is any sort of non-admissible conduct, statement,
7 representation, whether it's from Mr. Chastain -- and I take
8 your representation there was none -- or through counsel,
9 whether it is through spoken word or conduct, he may not say I
10 found this and I know this to be the thing that the defendant
11 used because X, Y or Z. That's not permissible.

12 If, based on an independent evaluation that the
13 materials that the government has admitted, and other things he
14 can match up with those, he can offer an opinion on those
15 things, that strikes me as probably kosher.

16 MR. ROOS: The other complication with this, and I
17 appreciate defense counsel said we can object, is, as I
18 understand it, he in the year 2023 looked at something provided
19 to him by the defendant or defense counsel showing a bunch of
20 wallet addresses within a singular Meta Mask wallet, and that
21 is the basis for his opinion. That seems to me to be an
22 unreliable foundation from which he can testify without the
23 hearsay of, oh, this is how it was set up back in 2021.

24 THE COURT: I think I am going to have to wait and
25 see. That was the question that I posed to Mr. Miller, is he

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1 going to be able to connect what he viewed in 2023 with conduct
2 in 2021, and Mr. Miller represents that the answer to that is
3 yes. If I conclude otherwise upon hearing the examination I
4 can always strike it, I can always give the appropriate
5 curative instruction. And there is also vigorous
6 cross-examination to be had.

7 So, to the extent there is a motion to preclude on
8 that basis, it is denied, but without prejudice to either
9 renewal or specific objections at trial.

10 On the demonstratives, I'm not happy with the late
11 disclosure. There is a reason that I entered an order
12 governing these things, and in that regard, I'm not happy.
13 Same applies to the Dr. Skinner demonstratives. But be that as
14 it may, the one, quote unquote, inaccuracy or misleading item
15 that the government identified, I don't think there is a whole
16 lot of weight to it. Yes, you have to open an account. That's
17 sort of implicit and obvious. That doesn't strike me as
18 meaningful. If you think it is meaningful, you can explore it
19 on cross.

20 Can you point me to anything else that raises a
21 concern on that score?

22 MR. ROOS: Just that, you know, we might have prepared
23 counter demonstratives for the expert, but we are going to
24 endeavor to do what we can between now and maybe use some of
25 the remaining lunch time to do something.

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1 THE COURT: Well, you know, you wrote me like nine
2 letters last night. So you could have been working on that
3 simultaneously as well.

4 Defense Exhibit 48. Do we need to address that now or
5 are we not likely to get there today? What's your thought?

6 MR. ROOS: I guess this really depends on the length
7 of this cross that's upcoming. If there's 10 to 15 more
8 minutes, then it seems like maybe we -- and these two experts
9 are not testifying.

10 THE COURT: Let's try and deal with it. Anything
11 defense wants to be heard on this?

12 I think the government's objections are well taken in
13 the sense that, number one, certainly thus far, the evidence is
14 quite clear that the stock options never vested, so in that
15 regard it's inaccurate to say that he had any equity interest.
16 Number two, I think there is plenty on there that's not in
17 evidence. Number three, it strikes me as a leap of logic and
18 certainly no foundation in the evidence to say that options are
19 to be valued at the fundraising valuation. That strikes me
20 there are a lot of assumptions baked into that chart that are
21 misleading and inconsistent with the evidence at this trial.

22 MR. FILOR: Your Honor, we do think the state of mind
23 issue is the same. Whether he was fully vested already or is
24 about to be vested in three months before he's pushed out of
25 the company, the intention not to hurt the OpenSea brand and

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1 not to hurt OpenSea such that he's hurting his own potential
2 equity share, I think is the same whether or not he was fully
3 vested.

4 THE COURT: If he wants to take the stand and say
5 that, he can do that. And if you want to argue based on
6 evidence in the record about that, that's also fine. But
7 that's different than admissibility of the chart, which
8 suggests that that was his equity share at that relevant time.

9 MR. FILOR: Understood, your Honor.

10 THE COURT: I am not hearing a vigorous argument in
11 opposition to the government, so that exhibit is precluded.

12 Can we anticipatorily deem the defense to have made a
13 Rule 29 motion.

14 MR. MILLER: That was what I was going to bring up.
15 We did not realize that we were supposed to have produced the
16 demonstratives days before.

17 I know we are short on time and so I'd like to just
18 say a couple of things, if that's okay, with respect to Rule
19 29.

20 THE COURT: Well, no. My question is can I deem you
21 to have made the motion at the close of the government's case.

22 MR. MILLER: Yes.

23 THE COURT: And you deem me to have reserved judgment
24 on it. If you want to make a record of any particular
25 arguments, we can do that at the end of the day.

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1 MR. MILLER: Understood. Absolutely.

2 THE COURT: Anything else? Or I'll give you your 11
3 minutes.

4 MR. FILOR: Thank you, nothing else.

5 THE COURT: See you in 10 plus minutes.

6 (Recess)

7 (Continued on next page)

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N4RKCHA3

AFTERNOON SESSION

12:03 PM

(Trial resumed; in open court; jury not present)

THE COURT: Hope you enjoyed your long break.

Anything we need to take up before we get the witness
back on the stand?

MR. FILOR: Nothing from defense, your Honor.

MR. ROOS: Nothing from us.

THE COURT: Great.

Let's get the witness back and get the jury.

(Continued on next page)

N4RKCHA3

Viau - Cross

1 (Jury present)

2 THE COURT: You may be seated.

3 Welcome back. Hope you enjoyed your break. Sorry for
4 starting five minutes late. We'll continue with the
5 cross-examination of Mr. Viau.

6 Mr. Viau, just a reminder, try and speak right into
7 the microphone, keep your voice up. Bend it a little toward
8 you if you want to make it a little easier.

9 And with that, Mr. Filor, you may proceed.

10 MR. FILOR: Thank you, your Honor.

11 DANIEL VIAU,

12 CROSS-EXAMINATION CONTINUED

13 BY MR. FILOR:

14 Q. Mr. Viau, you have banned people for violating the terms of
15 service, right?

16 A. Yes.

17 Q. But Nate has never been banned for violating the terms of
18 service, correct?

19 A. I'm not sure whether he's been banned or not.

20 Q. Who would know?

21 A. I'm not sure. Perhaps some members of the trust and safety
22 team.

23 Q. You worked and interacted a lot with Nate when he was at
24 OpenSea, right?

25 A. Yes.

N4RKCHA3

Viau - Cross

1 Q. And you know that Nate loved OpenSea, didn't he?

2 MR. ROOS: Objection.

3 THE COURT: Sustained.

4 BY MR. FILOR:

5 Q. You're aware that Nate was provided with an opportunity for
6 an equity stake in OpenSea, right?

7 A. I don't know the details of his employment offer.

8 Q. But you do remember, in July 2021, speaking with Nate
9 because both you and he had stock options, correct?

10 MR. ROOS: Objection.

11 THE COURT: Sustained.

12 Q. Did you have options in OpenSea?

13 MR. ROOS: Objection.

14 THE COURT: Sustained.

15 Q. Do you recall, in July 2021, a round of funding based on
16 which there was a valuation of OpenSea of over a billion
17 dollars?

18 MR. ROOS: Objection.

19 THE COURT: Sustained.

20 Q. You don't believe Nate ever wanted to hurt OpenSea, do you?

21 MR. ROOS: Objection.

22 THE COURT: Sustained.

23 Mr. Filor, let's move on.

24 MR. FILOR: Certainly, your Honor.

25

N4RKCHA3

Viau - Cross

1 BY MR. FILOR:

2 Q. One of Nate's responsibilities at OpenSea was to handle
3 problems with OpenSea products and to get them fixed, right?

4 A. Yes.

5 Q. And he was often on the front lines, so to speak, in
6 dealing with complaints from OpenSea users when things went
7 wrong?

8 A. Can you clarify what you mean by "front lines"?

9 Q. When, for example, the OpenSea platform would have outages,
10 there would be angry Twitter users, right?

11 A. Yes.

12 Q. And Nate would be the person that would try to work on that
13 and get it fixed, right?

14 A. Yes.

15 Q. And another example - do you recall when CryptoFunk NFTs
16 were delisted because they were mirroring CryptoPunks?

17 MR. ROOS: Objection.

18 THE COURT: I'll allow it. Go ahead.

19 THE WITNESS: I recall that there was some controversy
20 surrounding CryptoFunks. I don't remember the details of what
21 happened to that project.

22 MR. FILOR: Your Honor, may I approach and provide
23 what's been marked for identification as Defendant's
24 Exhibit 100?

25 THE COURT: You may.

N4RKCHA3

Viau - Cross

1 BY MR. FILOR:

2 Q. Mr. Viau, can you look at that, please, and tell me if you
3 recognize that.

4 THE COURT: Is there a question?

5 MR. FILOR: Sorry.

6 Q. Mr. Viau, do you recognize that?

7 A. Yes.

8 Q. Is that you liking a tweet from Mr. Chastain?

9 THE COURT: Sustained.

10 Q. Did you follow Mr. Chastain's Twitter account?

11 A. Yes.

12 Q. Was that @natechastain?

13 A. I believe so, yes.

14 Q. And from time to time, would you like -- within Twitter, is
15 it possible to like certain postings?

16 A. Yes.

17 Q. And from time to time, would you like some of
18 Nate Chastain's postings?

19 A. Yes.

20 Q. Do you recall liking a posting where Nate was having an
21 exchange with the CryptoFunks people who had been delisted for
22 violating the terms of service?

23 MR. ROOS: Objection.

24 THE COURT: I'll allow it. Overruled.

25 THE WITNESS: Will you please repeat the question?

N4RKCHA3

Viau - Cross

1 BY MR. FILOR:

2 Q. I will try.

3 Do you recall liking a tweet from Nate Chastain with
4 respect to his conversations over Twitter with the CryptoFunks
5 people who were angry about being delisted?

6 A. I don't recall that, no.

7 Q. Looking at DX 100, does that refresh your recollection?

8 THE COURT: So the question is: Looking at that,
9 sitting here today, do you remember liking a posting on the
10 subject Mr. Filor asked you about, not what that document may
11 or may not be?

12 THE WITNESS: Honestly, I struggle to interpret the --

13 THE COURT: Don't describe what's in the document.
14 Just does it refresh your memory about that? The answer is yes
15 or no.

16 THE WITNESS: No.

17 BY MR. FILOR:

18 Q. Your Twitter handle is Dan_OpenSea, right?

19 A. Yes.

20 Q. Isn't it correct that you even warned Nate that having to
21 deal so directly with OpenSea users over Twitter who are angry
22 about outages and other problems could be detrimental to Nate?

23 MR. ROOS: Objection.

24 THE COURT: Sustained.

25 Q. Did you think that the Crypto Twitter overreacted in

N4RKCHA3

Viau - Cross

1 September of 2021 when news of Nate's trading was disclosed?

2 MR. ROOS: Objection.

3 THE COURT: Sustained.

4 BY MR. FILOR:

5 Q. Are you familiar with the concept of Crypto Twitter?

6 A. Yes.

7 Q. Is that kind of a Twitter version that focuses on crypto
8 issues?

9 A. I'm sorry, will you please repeat that?

10 Q. Is that like that a Twitter verse that focuses on crypto
11 issues?

12 A. Did you say a Twitter verge?

13 Q. I said Twitter verse. I'm not sure the jargon is actually
14 correct, but what is Crypto Twitter?

15 A. People, I believe, use the term Crypto Twitter to describe
16 those users on Twitter who are interested primarily in crypto.

17 Q. Could Crypto Twitter users observe your OpenSea accounts
18 and your hot wallet addresses?

19 MR. ROOS: Objection.

20 Q. By "you," I mean not you, in particular, but anyone,
21 because it's on the open blockchain.

22 MR. ROOS: Objection; foundation.

23 THE COURT: Sustained.

24 BY MR. FILOR:

25 Q. Is the blockchain open for all to be able to view?

N4RKCHA3

Viau - Cross

1 A. Yes.

2 Q. And isn't it correct that Crypto Twitter users could see
3 purchases over OpenSea through the blockchain?

4 A. Yes.

5 Q. You are aware that Nate would use his @natechastain Twitter
6 handle to communicate with OpenSea users as part of his job,
7 right?

8 A. Yes.

9 Q. And you followed Nate on Twitter, you said?

10 MR. ROOS: Asked and answered.

11 THE COURT: Sustained.

12 Q. Are you aware that in 2021, Nate had between 10 and 20
13 thousand followers on Twitter?

14 A. I don't recall the number of followers that he had on
15 Twitter.

16 Q. But you know it was a significant number, right?

17 A. I believe, yes.

18 Q. And you knew that almost everybody at OpenSea followed his
19 Twitter, right?

20 A. I'm unfamiliar with the patterns of open -- I'm sorry. I'm
21 unfamiliar with patterns of Twitter use by other OpenSea
22 employees.

23 Q. Did you know that Devin Finzer and Alex Atallah followed
24 Nate Chastain's Twitter?

25 A. I don't recall whether they followed him or not.

N4RKCHA3

Viau - Cross

1 MR. FILOR: Can we show the witness, and only the
2 witness, Defendant's Exhibit 9, Mr. Berk.

3 Q. Let me know if you can see that, Mr. Viau.

4 A. I see it.

5 Q. Can you identify that as the type of tweet that Nate
6 Chastain would interact with OpenSea users about future
7 products?

8 A. This appears to be a communication from Nate to OpenSea
9 users.

10 MR. FILOR: And, your Honor, pursuant to GX 1001's
11 authenticity, we would offer DX 9.

12 MR. ROOS: Objection; 401, 403, 803.

13 THE COURT: I'll allow it. Overruled and admitted.
14 (Defendant's Exhibit 9 received in evidence)

15 MR. FILOR: Thank you, your Honor.

16 Your Honor, can we publish to the jury?

17 THE COURT: You may.

18 MR. FILOR: Thank you.

19 BY MR. FILOR:

20 Q. Mr. Viau, do you mind reading what Nate was sharing with
21 the OpenSea Twitter users in this tweet?

22 A. Sure.

23 "We're starting in a highly requested feature: The
24 ability to set offer preferences by item (open to offers,
25 minimum offer, notification settings for items). I'm

N4RKCHA3

Viau - Cross

1 interested in lining up some user interviews for this, or
2 capturing feedback async over Twitter. DM me if interested."

3 Q. And you're aware this is the type of interactions Nate
4 would have with OpenSea users outside of the company in order
5 to get feedback and exchange ideas, correct?

6 MR. ROOS: Objection.

7 THE COURT: Sustained.

8 MR. FILOR: We can take that down.

9 Mr. Berk, can you bring up Government Exhibit 705A for
10 the witness.

11 And, your Honor, this is in evidence. If we could
12 publish to the jury, please?

13 THE COURT: You may.

14 BY MR. FILOR:

15 Q. Let me know when you see that, Mr. Viau.

16 A. I see it.

17 MR. FILOR: Can you scroll to the bottom, Mr. Berk.
18 Thank you.

19 Q. Do you recall seeing this tweet in or about August of 2021?

20 A. I do not.

21 Q. But you're familiar with how Twitter worked because you
22 used that, right?

23 A. Yes.

24 Q. And so when Nate sent this tweet out, with respect to
25 buying featured NFTs, all of his users, including you and

N4RKCHA3

Viau - Cross

1 anyone else at OpenSea who follows Nate, would be able to see
2 that he was purchasing the featured NFT, right?

3 MR. ROOS: Objection; foundation.

4 THE COURT: Sustained as to form.

5 MR. FILOR: I'll move on, your Honor.

6 We can take that down.

7 BY MR. FILOR:

8 Q. Mr. Viau, you said you were one -- did you tell us that you
9 were one of the first people hired at OpenSea?

10 A. I don't recall whether I said that here.

11 Q. But you were, right, one of the first five people?

12 A. Yes.

13 Q. When Nate joined, he was within the first ten people?

14 A. That sounds about right.

15 Q. And at that time, there was no office, was there, when Nate
16 joined in early 2021?

17 A. I can't recall the timeline of when Nate joined versus when
18 we got an office.

19 Q. But before you got an office, the address of OpenSea was
20 Mr. Finzer's studio apartment in New York, right?

21 A. I believe that's accurate, yes.

22 Q. And you have been at OpenSea when it went from a fledgling
23 company of five people to a multibillion dollar company,
24 correct?

25 A. Yes.

N4RKCHA3

Viau - Cross

1 Q. Would you agree there were some things along the way that
2 the company couldn't keep up with because the growth was so
3 fast?

4 MR. ROOS: Objection.

5 THE COURT: Sustained.

6 BY MR. FILOR:

7 Q. In 2021, prior to when Nate left on September 15, there had
8 been no policies about which NFTs you could buy and which you
9 couldn't, correct?

10 MR. ROOS: Objection to scope and form.

11 THE COURT: Overruled.

12 THE WITNESS: I'm sorry, can you sharpen or rephrase
13 that for me, please?

14 BY MR. FILOR:

15 Q. I can try.

16 So prior to September 15, 2021, when Nate left the
17 company -- that's correct, that's when he left, right?

18 A. I believe that that's correct, yes.

19 Q. Prior to that, OpenSea had no policies about which NFTs you
20 could purchase and which you couldn't, right?

21 A. I don't believe that that's accurate.

22 Q. You believe that there were policies about which NFTs you
23 could purchase and which you couldn't?

24 A. Yes.

25 Q. Which NFTs could you purchase -- no, strike that.

N4RKCHA3

Viau - Cross

1 You're aware that on September 15, 2021, OpenSea
2 enacted policies indicating that you could not purchase NFTs
3 that were being featured on the website, right?

4 A. Can you clarify who you mean by "you"?

5 Q. You're aware that there were new policies enacted on
6 September 15, 2021, right?

7 A. Are you talking about internal policies or terms of service
8 type policies?

9 Q. Sorry, not terms of service policies for outsiders; I'm
10 talking about within the company, policies that applied to
11 employees.

12 A. I don't recall the exact date, but I do remember that new
13 policies were implemented.

14 Q. And that was after Nate Chastain had bought and sold some
15 of the featured NFTs, correct?

16 A. Yes.

17 Q. Prior to that, there had been no training about which NFTs
18 you could buy and which you couldn't, right?

19 A. I didn't go through any training.

20 Q. There had been no videos that you were required to watch
21 and indicate at the end of the year that you had watched the
22 videos, right?

23 A. I don't recall that sort of thing.

24 Q. There was no compliance department back then at OpenSea,
25 correct?

N4RKCHA3

Viau - Cross

1 A. We didn't have a department that was officially labeled a
2 compliance department.

3 Q. You didn't even have a general counsel before August of
4 2021, when Gina Moon started, correct?

5 A. That's correct.

6 Q. After September 2021, things changed, including training,
7 policies, and compliance, about NFT trading, correct?

8 MR. ROOS: Objection; compound.

9 THE COURT: Sustained.

10 Q. Have you enacted training since September 2021 with respect
11 to which NFTs you could buy?

12 A. I believe so, yes.

13 Q. And policies?

14 A. Yes.

15 Q. And you have compliance now?

16 A. Can you clarify what you mean?

17 Q. There are people that try to help you decide which NFTs you
18 could buy or what the policies are that are applicable to
19 purchasing NFTs?

20 A. Yes.

21 Q. Mr. Viau, you yourself buy and sell NFTs, right?

22 MR. ROOS: Objection.

23 THE COURT: Sustained.

24 Q. Mr. Viau, you recruited users who were buying and selling
25 NFTs to come work for OpenSea, right?

N4RKCHA3

Viau - Cross

1 MR. ROOS: Objection.

2 THE COURT: Sustained.

3 MR. FILOR: Your Honor, can I show the witness DX 79,
4 which has been marked for identification?

5 THE COURT: Sure.

6 BY MR. FILOR:

7 Q. Let me know when you can see that.

8 A. I see it.

9 Q. And what is that?

10 A. It's a tweet.

11 Q. From you?

12 A. Yes.

13 Q. And what was your purpose in sending the tweet?

14 MR. ROOS: Objection.

15 THE COURT: Sustained.

16 Q. Is this a tweet that you sent on or about July 21, 2021?

17 A. That's the date I see on the document.

18 Q. When you use the term "degen," d-e-g-e-n --

19 MR. ROOS: Objection. It's not in evidence.

20 THE COURT: Sustained.

21 MR. FILOR: Your Honor, I'm not seeking to put it in
22 evidence yet.

23 THE COURT: Then you may not ask about the content of
24 it because it's not in evidence yet. So, sustained.

25 MR. FILOR: Understood, your Honor.

N4RKCHA3

Viau - Cross

1 BY MR. FILOR:

2 Q. Do you recall trying to recruit people to OpenSea who were
3 trading NFTs on their own?

4 MR. ROOS: Same objection.

5 THE COURT: Sustained.

6 Mr. Filor, if you don't get to some proper lines of
7 cross, we're going to end it. So --

8 MR. FILOR: Understood, your Honor. Thank you.

9 BY MR. FILOR:

10 Q. Mr. Viau, did you send this tweet in the course of your
11 business for OpenSea?

12 A. Yes.

13 Q. Was this created at or near the time that you sent it?

14 A. What do you mean by "created"?

15 Q. Is this a document that you created on July 21, 2021?

16 A. Are you asking if that's when I sent the tweet?

17 Q. That's correct.

18 A. That's the date that I see on the document.

19 MR. FILOR: Your Honor, we would offer Defendant's
20 Exhibit 79.

21 MR. ROOS: The same relevancy objection.

22 THE COURT: Sustained.

23 Q. It was your understanding, when you were at OpenSea, that
24 buying and selling of NFTs was something that all OpenSea
25 employees could do, right?

N4RKCHA3

Viau - Cross

1 A. I don't know what was in the heads of the other members of
2 OpenSea. I believe that buying and selling NFTs was something
3 that OpenSea employees were likely to do.

4 Q. And you all discussed doing that?

5 A. From time to time, we discussed buying and selling NFTs,
6 yes.

7 Q. Can you approximate how many NFTs you bought and sold while
8 at OpenSea?

9 MR. ROOS: Objection.

10 THE COURT: Sustained.

11 Q. Mr. Viau, you had dinner with Nate and Devin Finzer days
12 after he left OpenSea, correct?

13 THE COURT: By "he," you mean Mr. Chastain?

14 MR. FILOR: That's correct.

15 THE WITNESS: Yes.

16 BY MR. FILOR:

17 Q. And you texted with Nate even after that, didn't you?

18 A. I don't recall the exact timeline, but I do recall that I
19 texted with Nate after he had left OpenSea.

20 MR. FILOR: Nothing further, your Honor. Thank you.

21 THE COURT: Any redirect?

22 MR. ROOS: No, thank you.

23 THE COURT: All right.

24 Mr. Viau, however you pronounce your name, you may
25 step down. My apologies on that.

N4RKCHA3

1 (Witness excused)

2 THE COURT: Government, please call your next witness.

3 MS. NICHOLS: Your Honor, our next witness is Julia
4 Gutierrez.

5 And maybe while we're getting her, we could do a
6 stipulation?

7 THE COURT: Sure.

8 MS. NICHOLS: Mr. Bianco, can we just pull up, for the
9 Court and the parties, Government Exhibit 1006, please.

10 We'll offer Government Exhibit 1006, your Honor.

11 THE COURT: All right. Admitted.

12 (Government's Exhibit 1006 received in evidence)

13 MS. NICHOLS: I'll just read it.

14 "It is hereby stipulated" --

15 THE COURT: Why don't we publish it as well.

16 MS. NICHOLS: Thank you, your Honor.

17 "It is stipulated and agreed between the parties that
18 the interstate wire element of Count One of the indictment is
19 met.

20 "It is further stipulated and agreed that this
21 stipulation is admissible as a government exhibit at trial."

22 THE COURT: All right. Thank you.

23 And, Mr. Roos, could I ask you just to retrieve the
24 materials from the witness stand while you're there.

25 MR. ROOS: Sure, your Honor.

N4RKCHA3

Gutierrez - Direct

1 (Witness sworn)

2 THE DEPUTY CLERK: Can you please state and spell your
3 full name for the record.

4 THE WITNESS: It's Julia Gutierrez, J-u-l-i-a
5 G-u-t-i-e-r-r-e-z.

6 THE COURT: Ms. Nichols, you may proceed.

7 MS. NICHOLS: Thank you, your Honor.

8 JULIA GUTIERREZ,

9 called as a witness by the Government,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. NICHOLS:

13 Q. Good afternoon, Ms. Gutierrez.

14 A. Hello.

15 Q. Where do you work?

16 A. The U.S. Attorney's Office for the Southern District of New
17 York.

18 THE COURT: Ms. Gutierrez, I need you to slide up a
19 little bit and speak right into the microphone --

20 THE WITNESS: Sorry.

21 THE COURT: -- loud and clear.

22 Go ahead.

23 THE WITNESS: The U.S. Attorney's Office for the
24 Southern District of New York.

25 Q. What is your current position?

N4RKCHA3

Gutierrez - Direct

1 A. I'm a paralegal.

2 Q. What are your duties and responsibilities as a paralegal?

3 A. We draft legal documents, assist at trial, help hand over
4 evidence to the defense. Really anything else that the
5 attorneys ask us to do, we'll do.

6 Q. Have you ever testified before?

7 A. Yes.

8 Q. About how many times?

9 A. Ten times.

10 Q. Did you have any role in investigating this case?

11 A. No.

12 MS. NICHOLS: Can we please pull up, Mr. Bianco, just
13 for the witness and the parties, Government Exhibit 1002.

14 And just flip to the second page there.

15 Pursuant to the stipulation, we would offer this,
16 Government Exhibit 1002, your Honor.

17 THE COURT: Admitted.

18 (Government's Exhibit 1002 received in evidence)

19 MS. NICHOLS: May we publish?

20 THE COURT: You may.

21 BY MS. NICHOLS:

22 Q. Ms. Gutierrez, could you just, please, read after the part
23 that it is stipulated and agreed between the parties, the
24 paragraph numbered number 1?

25 A. "Government Exhibits 500 and 501 are true and correct

N4RKCHA3

Gutierrez - Direct

1 copies of documents recovered from the defendant's laptop."

2 Q. Okay.

3 MS. NICHOLS: I don't think we need to zoom,
4 Mr. Bianco. I think we can see it.

5 Q. Can you just read the part of paragraph 2 that pertains to
6 the government exhibits?

7 A. Yes.

8 "Government Exhibits 601 through 611 are true and
9 correct copies of conversations, documents, and/or data that
10 was recovered from the defendant's cell phone."

11 Q. Thank you.

12 MS. NICHOLS: You can take that down, Mr. Bianco.

13 Can we please put up, for just the witness, Government
14 Exhibit 500.

15 Q. Do you recognize this, Ms. Gutierrez?

16 A. Yes.

17 Q. Have you seen it before your testimony here today?

18 A. Yes.

19 Q. What is it?

20 A. It's a confidential information and invention assignment
21 agreement for Nate Chastain.

22 Q. Based on the stipulation that we just read, where did this
23 document come from?

24 A. Nate Chastain's laptop.

25 MS. NICHOLS: The government offers Exhibit 500.

N4RKCHA3

Gutierrez - Direct

1 THE COURT: Any objection?

2 MR. FILOR: No objection, your Honor.

3 THE COURT: Admitted.

4 (Government's Exhibit 500 received in evidence)

5 MS. NICHOLS: May we publish, your Honor?

6 THE COURT: You may.

7 MS. NICHOLS: Mr. Bianco, can we pull up, side by side
8 with this exhibit, Government Exhibit 214, please.

9 BY MS. NICHOLS:

10 Q. Ms. Gutierrez, did you have a chance to compare these two
11 documents before your testimony?

12 A. Yes.

13 Q. How did they compare?

14 A. They're the same document.

15 MS. NICHOLS: We can take that down, Mr. Bianco.

16 And please pull up Government Exhibit 605, just for
17 the witness.

18 Q. So, Ms. Gutierrez, again, based on the stipulation that we
19 just read, where did this document come from?

20 A. Nate Chastain's cell phone.

21 Q. And what is it?

22 A. It's the confidential information and invention assignment
23 agreement for Nate Chastain.

24 MS. NICHOLS: The government offers 605.

25 MR. FILOR: No objection.

N4RKCHA3

Gutierrez - Direct

1 THE COURT: Admitted.

2 (Government's Exhibit 605 received in evidence)

3 MS. NICHOLS: May we publish, your Honor?

4 THE COURT: You may.

5 MS. NICHOLS: Now, Mr. Bianco, if we can, is it
6 possible to pull up three documents - Government Exhibit 214,
7 500, and 605 - all side by side?

8 (Pause)

9 MS. NICHOLS: I'll just move on.

10 BY MS. NICHOLS:

11 Q. Ms. Gutierrez, were you able to review Government
12 Exhibit 605 before your testimony here today?

13 A. Yes.

14 Q. Were you able to compare it to Government Exhibits 500 and
15 214?

16 A. Yes.

17 Q. And how did those three documents compare?

18 A. They're all the same document.

19 MS. NICHOLS: Can we please pull up, Mr. Bianco, just
20 for the witness and the parties, Government Exhibit 501.

21 Q. Do you recognize that?

22 A. Yes.

23 Q. What is it?

24 A. It's a nondisclosure agreement.

25 MS. NICHOLS: Can we flip to the signature page,

N4RKCHA3

Gutierrez - Direct

1 please. Second page.

2 Q. Who signed this document?

3 A. Nate Chastain.

4 Q. Based on the stipulation, where did this document come
5 from?

6 A. If it's -- the laptop.

7 MS. NICHOLS: The government offers 501.

8 MR. FILOR: No objection.

9 THE COURT: Admitted.

10 (Government's Exhibit 501 received in evidence)

11 MS. NICHOLS: May we publish, your Honor?

12 THE COURT: You may.

13 MS. NICHOLS: Mr. Bianco, can you please go back to
14 the first page. Thank you.

15 Can we please pull up, next to this document, what's
16 already in evidence as Government Exhibit 609.

17 BY MS. NICHOLS:

18 Q. Ms. Gutierrez, did you compare these documents before your
19 testimony?

20 A. Yes.

21 Q. How did they compare?

22 A. They're the same.

23 MS. NICHOLS: We can take that down.

24 Can we please pull up, for everyone, what's in
25 evidence as Government Exhibit 217.

N4RKCHA3

Gutierrez - Direct

1 Q. Ms. Gutierrez, did you review this document prior to your
2 testimony?

3 A. Yes.

4 Q. We see here one page. Does the document have more than one
5 page?

6 A. Yes. It's 30 pages long.

7 Q. What, in general, is this document -- what is being
8 discussed in this document?

9 A. The people in the Slack chat are discussing certain NFTs
10 that they might want to put on the home page of OpenSea to
11 feature.

12 Q. Do you see how, at the bottom there, there is a line of
13 text in blue font?

14 A. Yes.

15 MS. NICHOLS: Mr. Bianco, can we scroll just a
16 couple -- just flip through the pages.

17 We can stop there.

18 Q. What does the blue font represent in this document?

19 A. Those are hyperlinks.

20 Q. What's a hyperlink?

21 A. It's a link that when you click on it, it takes you to a
22 web page.

23 Q. Were you able to click on some of the links in this
24 document before your testimony here today?

25 A. Yes.

N4RKCHA3

Gutierrez - Direct

1 Q. Do all of them work?

2 A. No.

3 Q. Do some of them work?

4 A. Yes.

5 Q. So let's go back to page 1, please.

6 Did you have a chance, before your testimony, to click
7 the hyperlink that's at the bottom of page 1 here?

8 A. Yes.

9 Q. Just to be clear, that is -- can you just read the message
10 that corresponds to that hyperlink?

11 A. Yes.

12 It says, "Current favorites gallery that I've set up
13 is this one," and then the link.

14 Q. What happens when you put that link into a web browser?

15 A. It takes you to an OpenSea page that is a gallery of
16 favorites.

17 Q. Within that gallery, what did you find?

18 A. NFTs.

19 Q. Were you able to compare some of the NFTs in that gallery
20 to some of the NFTs that OpenSea has featured on its website?

21 A. Yes.

22 Q. What was the result of that comparison?

23 A. Some of the NFTs that were discussed in this Slack channel
24 were then featured on their website, on the home page.

25 Q. What about specifically in the favorites gallery that's

N4RKCHA3

Gutierrez - Direct

1 highlighted there, were --

2 A. Oh, yes. Sorry, I didn't answer the question.

3 Specifically in the favorites gallery, some of those were on
4 the home page.

5 MS. NICHOLS: Can we please pull up what's in evidence
6 as Government Exhibit 2A, 3A, and 4A. And if we can't do them
7 all at the same time, let's just flip through them quickly,
8 please.

9 Q. Do you recognize these exhibits, Ms. Gutierrez?

10 A. Yes.

11 Q. And what are they?

12 A. They're screen grabs of the home page of OpenSea.

13 Q. How, if at all, did the NFTs that we see here featured on
14 these home -- on these screen grabs compare to the ones in the
15 favorites gallery that you were just talking about?

16 A. These were all in the favorites gallery.

17 MS. NICHOLS: Okay. We can take that down,
18 Mr. Bianco.

19 And can we please go back to Government Exhibit 217
20 and look at page 16 of that document.

21 Q. Ms. Gutierrez, did you have a chance, before your testimony
22 here today, to click the hyperlink that's towards the bottom of
23 the page that was posted by a person named Pascal Marsolais?

24 A. Yes.

25 Q. What happens when you click that hyperlink?

N4RKCHA3

Gutierrez - Direct

1 A. It takes you to an OpenSea page for that artist, EarlyWorm.

2 Q. Were you able to compare the NFTs in that EarlyWorm
3 collection to any that were featured on OpenSea's home page?

4 A. Yes.

5 Q. And what was the result of that comparison?

6 A. It was featured.

7 MS. NICHOLS: Can we please pull up Government
8 Exhibit 16A, which is in evidence.

9 Q. What are we looking at here, Ms. Gutierrez?

10 A. The home page of OpenSea, with one of EarlyWorm's NFTs
11 featured.

12 MS. NICHOLS: We can take that down.

13 And please go back to Government Exhibit 217. And
14 let's look at page 24.

15 Q. I want to focus you, Ms. Gutierrez, on the second
16 hyperlink, the one posted by a person called Hamish Barnes.

17 Did you have a chance to navigate to that hyperlink
18 before your testimony?

19 A. Yes.

20 Q. And what did you find there?

21 A. It opens to an OpenSea page for another artist called
22 Showdeer, like deer the animal.

23 Q. Were you able to identify any instances where an NFT by the
24 artist Showdeer was featured on OpenSea's home page?

25 A. I scrolled through Showdeer's works. I didn't see that

N4RKCHA3

Gutierrez - Direct

1 specific NFT on the gallery.

2 Q. When you say "that specific NFT," what NFT are you talking
3 about?

4 A. The one that was featured eventually on the home page, that
5 one was not in this gallery.

6 Q. Okay. So I think my question, though, was: Was an NFT by
7 Showdeer ever featured on OpenSea's web page?

8 A. Oh. Yes, it was.

9 MS. NICHOLS: Let's pull up Government Exhibit 22B, as
10 in boy.

11 Q. What is this, Ms. Gutierrez?

12 A. A tweet.

13 Q. What is being discussed in this tweet?

14 A. That the artist Showdeer had an NFT that was going to be
15 featured on the OpenSea home page.

16 Q. Just to explain what you were talking about a moment ago,
17 were you able to find this particular NFT on the Showdeer
18 collection when you navigated to the hyperlink?

19 A. I wasn't able to find it.

20 Q. When did you look for that? When did you do the navigation
21 to that hyperlink, approximately?

22 A. A week ago.

23 Q. Is it the same artist, though?

24 A. It's the same artist.

25 MS. NICHOLS: We could take that down.

N4RKCHA3

Gutierrez - Direct

1 Can we please pull up, just for the witness and the
2 parties, Government Exhibit 204.

3 Q. Do you recognize this, Ms. Gutierrez?

4 A. Yes.

5 Q. What is it?

6 A. It's an email from Nate Chastain to someone named Bernat.

7 MS. NICHOLS: The government offers Government
8 Exhibit 204.

9 MR. FILOR: No objection.

10 THE COURT: Admitted.

11 (Government's Exhibit 204 received in evidence)

12 MS. NICHOLS: May we publish, your Honor?

13 THE COURT: You may.

14 MS. NICHOLS: Can we please make it just a tiny bit
15 bigger, Mr. Bianco.

16 Great. Thank you.

17 BY MS. NICHOLS:

18 Q. What is this email about, Ms. Gutierrez?

19 A. Nate is telling Bernat that one of his NFTs is going to be
20 featured on the OpenSea home page.

21 Q. Is going to be featured or has been featured?

22 MR. FILOR: Objection, your Honor.

23 THE COURT: I'll allow it.

24 Overruled.

25 THE WITNESS: Apologies. It says has selected, so

N4RKCHA3

Gutierrez - Direct

1 past tense.

2 BY MS. NICHOLS:

3 Q. What's the timestamp of this email?

4 A. 2:43 a.m. on May 11, 2021.

5 MS. NICHOLS: Mr. Bianco, can we please pull up next
6 to this what's in evidence as Government Exhibit 3B, as in boy.

7 Q. What's being shown in 3B, Ms. Gutierrez?

8 A. It's a tweet.

9 Q. And who tweeted -- who wrote the tweet?

10 A. OpenSea.

11 Q. What is the subject of the tweet?

12 A. That Bernat's work will be featured on the home page of
13 OpenSea.

14 Q. Do you see the same NFT in the tweet that you see in the
15 email?

16 A. Yes.

17 Q. What is the timestamp of the tweet?

18 A. It's 9:32 p.m. on May 10th, 2021.

19 Q. So, just to be clear, which of these happened first?

20 A. The tweet happened first.

21 MS. NICHOLS: We can take that down.

22 Can we please pull up, just for the witness,
23 Government Exhibit 607.

24 Q. Do you recognize this, Ms. Gutierrez?

25 A. Yes.

N4RKCHA3

Gutierrez - Direct

1 Q. What is it?

2 A. It is a document about Mr. Chastain's employment with Ozone
3 Networks.

4 MS. NICHOLS: The government offers Exhibit 607.

5 MR. FILOR: This may be in already, but no objection
6 either way.

7 THE COURT: All right. Well, it's admitted either for
8 the first time or the second time, but it's admitted in either
9 case.

10 MS. NICHOLS: Thank you, your Honor.

11 May we publish?

12 THE COURT: You may.

13 (Government's Exhibit 607 received in evidence)

14 BY MS. NICHOLS:

15 Q. Ms. Gutierrez, can you please --

16 MS. NICHOLS: Or, actually, Mr. Bianco, can you zoom
17 in on the second numbered paragraph, please.

18 Q. Can you please read this paragraph, Ms. Gutierrez?

19 A. Yes.

20 "Compensation and Employee Benefits: You will be paid
21 as compensation for your services at a gross rate of \$135,000
22 per year, payable on the company's regular payroll dates. As a
23 regular employee of the company, you will be eligible to
24 participate in those company-sponsored benefits generally made
25 available to all employees."

N4RKCHA3

Gutierrez - Direct

1 MS. NICHOLS: Okay. We can take that down.

2 Can we please pull up Government Exhibit 611 for the
3 witness.

4 Q. Do you recognize this, Ms. Gutierrez?

5 A. Yes.

6 Q. Just to be clear, was this mentioned in the stipulation
7 that we read at the beginning of your testimony?

8 A. Yes.

9 Q. And so where did this document come from?

10 A. It is a page from a Cellebrite extraction report for an
11 iPhone.

12 MS. NICHOLS: Can we just pull back up, then,
13 Government Exhibit 1002, please.

14 Q. Can you please read, Ms. Gutierrez, just the beginning --
15 or just paragraph 2 again?

16 A. All right.

17 "Government Exhibit 601 through 611 are true and
18 correct copies of conversations, documents, and/or data that
19 were recovered from the defendant's cell phone."

20 MS. NICHOLS: So let's go back to 611, just for the
21 witness, Mr. Bianco.

22 THE COURT: Can I interrupt?

23 Do you know what Cellebrite is?

24 THE WITNESS: Yes.

25 THE COURT: Can you explain briefly?

N4RKCHA3

Gutierrez - Direct

1 THE WITNESS: It's a platform that we use to review
2 cell phones and other devices easily in the office.

3 THE COURT: So it's a program or platform that enables
4 you to take data off of a cell phone and review it; is that
5 accurate?

6 THE WITNESS: Yes.

7 BY MS. NICHOLS:

8 Q. So, a particular iPhone here -- which iPhone is that?

9 A. Sorry, that's a good question, incorrectly at first. It is
10 Nate Chastain's cell phone.

11 MS. NICHOLS: The government offers 611.

12 MR. FILOR: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 611 received in evidence)

15 MS. NICHOLS: May we publish, your Honor?

16 THE COURT: You may.

17 BY MS. NICHOLS:

18 Q. So, Ms. Gutierrez, now that everyone can see it, what is
19 the type of information or the category of information that's
20 depicted on this page of the extraction report?

21 A. Searched items.

22 Q. What does that indicate?

23 A. Like a Google search.

24 Q. From this phone?

25 A. From this phone.

N4RKCHA3

Gutierrez - Direct

1 Q. Can you please read what's in the value of the searched
2 items for each of these rows?

3 A. It says, for all three, "Living on 160K in NYC."

4 Q. What were the dates of those searches?

5 A. September 8, 2021, and September 7, 2021.

6 MS. NICHOLS: We can that down, Mr. Bianco.

7 Let's pull up, just for the witness, Government
8 Exhibit 610.

9 Q. Do you recognize this, Ms. Gutierrez?

10 A. Yes.

11 Q. What is it?

12 A. It's a document that came from Mr. Chastain's phone. It
13 appears to be some sort of notes that he wrote.

14 MS. NICHOLS: The government offers 610.

15 MR. FILOR: No objection.

16 THE COURT: Admitted.

17 (Government's Exhibit 610 received in evidence)

18 MS. NICHOLS: May we publish, your Honor?

19 THE COURT: You may.

20 BY MS. NICHOLS:

21 Q. Ms. Gutierrez, now that everyone can see it, can you please
22 read the top of this document?

23 A. Yes.

24 It says, "What do I want to do?

25 "1 million from NFTs, 10 million (minimum) from

N4RKCHA3

Gutierrez - Direct

1 OpenSea."

2 Do you want me to keep going?

3 Q. No, that's fine.

4 MS. NICHOLS: We can pull that down.

5 Can we please pull up what's already in evidence as
6 Government Exhibit 207.

7 Q. Do you recognize this, Ms. Gutierrez?

8 A. Yes.

9 Q. What is it?

10 A. It's a Slack channel.

11 Q. What's the date of this Slack channel communication?

12 A. May 22nd, 2021.

13 Q. Who are the participants to the conversation?

14 A. Nate Chastain and Pascal Marsolais.

15 MS. NICHOLS: We don't need any highlighting,
16 Mr. Bianco.

17 Q. Let's read this, Ms. Gutierrez. You be Mr. Chastain, and I
18 will be Pascal Marsolais.

19 A. Okay.

20 "I almost FOMO'd into Dario's collection (featured
21 home page artist) for \$400 today."

22 Q. "Oh!!"

23 A. "It's so funny because I am directly responsible for
24 creating the FOMO-able situation."

25 I think --

N4RKCHA3

Gutierrez - Direct

1 THE WITNESS: Can you just move your cursor?

2 "Yeah, LOL."

3 "I could have easily bought one yesterday before I
4 selected him for the home page feature."

5 Q. "You need to buy before featuring." Winky face.

6 A. "I know, I failed." Sad face.

7 Q. "Hee hee."

8 A. "I realize this is a strange way to operate as an employee
9 of OpenSea, but I still have such a hard time spending hundreds
10 of dollars on an NFT."

11 MS. NICHOLS: Let's pull up Government Exhibit 208.

12 Q. What is this, Ms. Gutierrez?

13 A. It's another Slack channel.

14 Q. And what's the date of it?

15 A. May 23rd, 2021.

16 Q. Who are the participants?

17 A. It's Pascal Marsolais and Nate Chastain.

18 Q. So let's do the same thing. This is four pages. I'll be
19 Pascal.

20 "When do we plan to replace the featured artist on
21 home page? At this point I'm considering jumping on the hype
22 train." Smiley face.

23 A. "I switch them out every Monday and Thursday."

24 Q. "Okay!"

25 A. "I'm definitely open to considering any artists you have in

N4RKCHA3

Gutierrez - Direct

1 mind - I usually try to pick something outside of pixel art."

2 Q. "Yup, okay."

3 A. "Artists that are not super popular already. My ideal
4 artist to feature is someone like Dario, who doesn't have a
5 mainstream fan base, but has a couple of thousand followers on
6 Twitter."

7 Q. "Okay."

8 A. "But open to any size following as long as it's not a major
9 project."

10 Q. And then Pascal Marsolais puts a hyperlink to assets/Ugly
11 Kitties by Sabet.

12 A. "I think I saw those and wondered if they were meant to be
13 too close an approximation of Uglydolls by David Horvath."

14 Q. "Seems to be there to compete with them, yeah. Mmm, I'll
15 try to find some suggestions tonight. I'm taking the risk to
16 buy Dario at .44" --

17 MS. NICHOLS: Can we go to the next page, please,
18 Mr. Bianco. Thank you.

19 Q. -- "and flip nervously."

20 Then there's another link, 19K on Instagram and
21 another link.

22 A. "LOL. Did you just buy this one?"

23 Q. "Hell yeah."

24 A. "Only because initially I thought you were proposing it for
25 a feature. Ha-ha. I think our community will take us to task

N4RKCHA3

Gutierrez - Direct

1 if we feature something we own."

2 Q. "Oh, for sure. I don't want to be in conflict of interest
3 (is it something we say in English?)"

4 A. "Yeah, 'don't want it to be a conflict of interest.'"

5 MS. NICHOLS: We can take that down.

6 Q. Ms. Gutierrez, do you have an understanding of what the
7 expression F-O-M-O means, FOMO?

8 A. Yes.

9 Q. What is that?

10 A. Fear of missing out.

11 MS. NICHOLS: Can we please pull up Government
12 Exhibit 209.

13 Q. What's the date of this conversation?

14 A. May 25, 2021.

15 Q. And who are the participants?

16 A. Again, it's Nate Chastain and Pascal Marsolais.

17 MS. NICHOLS: Okay. We don't need to highlight,
18 Mr. Bianco.

19 Q. I'm just going to read Marsolais, and you read Nate
20 Chastain.

21 "Nate, I will safelist Tank Art. It wasn't."

22 A. "Ooh, thank you!"

23 Q. "I bought one and noticed." Winky face.

24 A. "Sorry, will add that to the launch checklist for featuring
25 new artists. I reached out. He better start listing these.

N4RKCHA3

Gutierrez - Direct

1 LOL." And then it appears a file is attached.

2 Q. "I was also chatting with Dario, the artist that was
3 featured just before. I asked him if he has some
4 recommendations/suggestions."

5 A. "Oh, sweet. Feel free to pass him my congrats and let him
6 know I selected him. I wanted to give him congratulations, but
7 couldn't connect with him on Twitter."

8 MS. NICHOLS: Go to the next page, please.

9 We're just looking for the hard copy, your Honor.
10 Just one moment, please.

11 May I hand this up to Ms. Gutierrez?

12 THE COURT: You may. There's also an ELMO in the
13 podium there, if you want to do that.

14 MS. NICHOLS: It's really short. We're almost done
15 with it.

16 THE COURT: All right. Even better. You may
17 approach.

18 BY MS. NICHOLS:

19 Q. Do you wanted to read the last one that you read?

20 A. Sure.

21 "Oh, sweet. Feel free to pass him my congrats and let
22 him know I selected him. I wanted to give him congratulations,
23 but couldn't connect with him on Twitter."

24 Q. Smiley face. "Awesome. Will do. He recommended this
25 collection. I agreed, it looks amazing," and then there's a

N4RKCHA3

Gutierrez - Direct

1 hyperlink to a collection for "Art by Gabe Weis."

2 A. "I feel like I am destined to FOMO every one of these
3 promotional features, LOL. If you are successful in flipping
4 this for one ETH," E-T-H, "I will feel like I am very bad with
5 money for not doing the same, LOL."

6 Q. "Oh, yeah, for sure." That's a life-changing opportunity
7 for those artists. Yeah, I wasn't sure if it was ethical to do
8 so...but...I bought it after it was already featured...no
9 privilege."

10 MS. NICHOLS: We can take that down, Mr. Bianco.

11 Can we please pull up, just for the witness and the
12 parties, Government Exhibit 604.

13 Q. Do you recognize this, Ms. Gutierrez?

14 A. Yes.

15 Q. What is it?

16 A. It's a Cellebrite extraction report.

17 Q. From what?

18 A. From Nate Chastain's cell phone.

19 MS. NICHOLS: The government offers Exhibit 604.

20 THE COURT: Any objection?

21 MR. FILOR: No objection.

22 THE COURT: Admitted.

23 (Government's Exhibit 604 received in evidence)

24 MS. NICHOLS: May we publish, your Honor?

25 THE COURT: You may.

N4RKCHA3

Gutierrez - Direct

1 MS. NICHOLS: Mr. Bianco, can we just zoom in on the
2 top, the participants there.

3 BY MS. NICHOLS:

4 Q. So, who are the participants to this conversation?

5 A. Liz Sherman and Nate Chastain.

6 MS. NICHOLS: Let's zoom out now, please.

7 Q. So who is depicted using the blue bubbles?

8 A. Liz Sherman.

9 Q. And who is depicted in green?

10 A. Nate Chastain.

11 Q. And how do you know that?

12 A. Because it says on the top Nate Chastain is the owner, and
13 the owner's messages go on the right, as if it was a text
14 message conversation. It also says "from owner" in the green
15 text message and then "from Ms. Sherman" in the blue.

16 MS. NICHOLS: Mr. Bianco, can we just make the two
17 bubbles, if we can, bigger, both of them? Thank you.

18 Q. So I'll be Liz Sherman, and can you please read for
19 Mr. Chastain?

20 A. Yes.

21 Q. "When did this start and then blow up?"

22 A. "Monday night, I got a sense that something was wrong from
23 a strange message from a Twitter user, and then Tuesday night,
24 I was at a dinner with OpenSea, and Dan showed me a public
25 tweet with the accusation that was going viral."

N4RKCHA3

Gutierrez - Direct

1 Q. Can you please read the date of these messages?

2 A. Yes. It's September 15, 2021.

3 MS. NICHOLS: Okay. We can take that down.

4 And then pull up, for just the witness and the
5 parties, Government Exhibit 603.

6 Q. Do you recognize this?

7 A. Yes.

8 Q. What is it?

9 A. It's another Cellebrite extraction report from
10 Nate Chastain's cell phone.

11 MS. NICHOLS: The government offers 603.

12 MR. FILOR: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 603 received in evidence)

15 MS. NICHOLS: Can we please zoom in on the messages
16 just on the first page here.

17 BY MS. NICHOLS:

18 Q. What is the date of the messages in this conversation?

19 A. September 15, 2021.

20 Q. Is that the same date that you just -- from the previous
21 messages?

22 A. Yes.

23 Q. So I'll read for Liz Sherman.

24 "One last question: How much profit are we talking
25 about here? I just want a full picture, and I will not judge

N4RKCHA3

Gutierrez - Direct

1 you on this, I hope you know."

2 A. "19 ETH, which is about 65K."

3 MS. NICHOLS: Can we go, please, Mr. Bianco, to the
4 second page of this exhibit? Can we just make it a little
5 bigger so we can read it a little easier?

6 Q. "On how many NFTs?"

7 A. "I'm not sure. Maybe 15 or so total."

8 Q. "But all of them weren't as straightforward as you knowing
9 something would be featured/'go up' and then buying it, right?"

10 MS. NICHOLS: Go to the next page, Mr. Bianco.

11 I think maybe we'll just transition to the ELMO, your
12 Honor. I'm sorry for the difficulties. It requires me to know
13 how to work the ELMO, which is questionable.

14 THE COURT: It's true. And Ms. Smallman stepped out,
15 but hang on. Hopefully, I can figure it out as well.

16 MS. NICHOLS: I think I have it on.

17 THE COURT: We figured it out without you,
18 Ms. Smallman.

19 MS. NICHOLS: The only problem is the glare is fierce
20 here.

21 Okay.

22 BY MS. NICHOLS:

23 Q. I'm going to try to keep going, Ms. Gutierrez, but if you
24 can't read it, just tell me.

25 I'm just going to back up so that we remember where we

N4RKCHA3

Gutierrez - Direct

1 are.

2 Again, Ms. Sherman said: "On how many NFTs?"

3 A. "I'm not sure. Maybe 15 or so total."

4 Q. "But all of them weren't as straightforward as you knowing
5 that something would be featured/'go up' and then buying it,
6 right?"

7 "You liked artists. Everyone wants things that they
8 like to be liked by others and to succeed."

9 "I saw how much you helped people and how much they
10 appreciated it."

11 A. "I did buy NFTs ahead of them being featured on the home
12 page knowing full well that the increased exposure would
13 increase their price. Somehow I deluded myself into thinking
14 that because I was introducing them to a larger audience, it
15 was okay that I was capturing some upside."

16 MS. NICHOLS: I think we only have one more exhibit,
17 your Honor, which is Government Exhibit 601.

18 The government offers Exhibit 601.

19 MR. FILOR: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 601 received in evidence)

22 MS. NICHOLS: May we publish, your Honor?

23 THE COURT: You may.

24 MS. NICHOLS: I think this one, you maybe have.

N4RKCHA3

1 BY MS. NICHOLS:

2 Q. Is this from the same conversation -- is this a message
3 with the same participants as the other messages that we've
4 been looking at?

5 A. Yes.

6 Q. And what's the date of this message?

7 A. Also September 15, 2021.

8 Q. Who is the speaker in this message?

9 A. Nate Chastain.

10 Q. Can you please read the message?

11 A. "If it's at .1, and you want to buy it, you can list it at
12 1 ETH. The home page feature brings people out who want to
13 flip it from 1 ETH to 2 ETH, et cetera."

14 MS. NICHOLS: No further questions, your Honor.

15 THE COURT: Cross-examination?

16 MR. FILOR: No cross, your Honor.

17 THE COURT: All right. Ms. Gutierrez, you may step
18 down. Why don't you hand that document to counsel.

19 (Witness excused)

20 THE COURT: Next witness for the government?

21 MS. NICHOLS: Could we just have one moment, your
22 Honor?

23 THE COURT: You may.

24 (Pause)

25 MS. NICHOLS: The government rests.

N4RKCHA3

1 THE COURT: All right.

2 So, ladies and gentlemen, you just heard some magic
3 words, namely, that the government rests; that is to say that
4 its case in chief is over.

5 My understanding is that the defense does intend to
6 present a case, and we're going to proceed directly into that.
7 I do want to remind you, though, that as I've told you before,
8 and will tell you again, that the government bears the burden
9 of proof at all times in a criminal trial, which is to say that
10 the defense has no obligation to present any evidence, call any
11 witnesses, do anything because the government bears the burden
12 at all times.

13 That being said, as I told you at the outset of the
14 case, the defense may put on a case if it wishes to do so, and
15 my understanding is that the defendant does intend to do so.

16 So, with that, I'll ask the defense to call its first
17 witness.

18 MR. MILLER: Thank you, your Honor.

19 The defense calls Dr. Matthew Edman to the stand.

20 (Witness sworn)

21 THE DEPUTY CLERK: Can you please state and spell your
22 full name for the record.

23 THE WITNESS: Sure.

24 My name is Matthew Edman, M-a-t-t-h-e-w E-d-m-a-n.

25 THE COURT: You may proceed.

NARKCHA3

Edman - Direct

1 MR. MILLER: Thank you, your Honor.

2 MATTHEW EDMAN,

3 called as a witness by the Defendant,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MILLER:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. How old are you?

10 A. I'm 40 years old.

11 Q. What do you do for a living?

12 A. I'm a partner and cofounder of NAXO Labs. We are a
13 cybersecurity investigations firm located in New York
14 specializing in cryptocurrency and digital forensic
15 investigations.

16 Q. Let's unpack that a little bit.

17 When you say you're a partner and cofounder, what do
18 you mean by that?

19 A. I mean I started the firm with colleagues of mine, most of
20 whom are former law enforcement. My responsibilities, in
21 addition to managing the firm, include working with
22 individuals, companies, law firms, and law enforcement agencies
23 on matters related to hacking, theft, and illicit uses of
24 cryptocurrency.

25 Q. How long have you been doing this?

NARKCHA3

Edman - Direct

1 A. Our firm has been in existence for about a year now, but
2 I've been working in this field for over ten years at this
3 point.

4 Q. Can you describe your education for the Court and jury?

5 A. Sure.

6 So I have a Bachelor of Science in computer science
7 from Baylor University; I have a Master of Science, also in
8 computer science, from Rensselaer Polytechnic Institute; and I
9 have a Ph.D. in computer science, also from Rensselaer
10 Polytechnic Institute, where my graduate research focused on
11 security and applied cryptography, in particular, anonymous
12 communication systems on the internet.

13 THE COURT: Doctor, I'm going to ask you to raise your
14 voice a little bit and try to articulate a little more clearly
15 and loudly.

16 Go ahead.

17 MR. MILLER: Thank you, Judge.

18 BY MR. MILLER:

19 Q. Doctor, have you done any relevant academic research?

20 A. I have.

21 Q. What have you done?

22 A. I have published a number of papers in the field of
23 anonymous communication systems.

24 Q. What does that mean, anonymous communication systems?

25 A. That generally refers to tools and techniques that

NARKCHA3

Edman - Direct

1 individuals use to hide their identity on the internet.

2 Q. Now, can you walk us through your relevant career
3 experience, please, sir?

4 A. Sure.

5 While I was still in grad school, and also after I
6 completed my graduate studies, I was a cybersecurity engineer
7 for a federally funded research and development center called
8 The MITRE Corporation. MITRE supports a number of different
9 aspects of the federal government, but I, in particular,
10 supported the Federal Bureau of Investigation's Remote
11 Operations Unit. I was based down in Quantico, Virginia.
12 Given my academic background, most of my work there focused on
13 supporting law enforcement in investigations involving
14 anonymous communication systems. And this was in the 2009 to
15 2013 time range, where cryptocurrencies were becoming much more
16 prevalent in law enforcement investigations. So a lot of my
17 work focused on that.

18 Q. What did you do after that?

19 A. After MITRE, I worked for a consulting firm called
20 FTI Consulting based here in New York. I was a member of the
21 cybersecurity and investigations group, where I worked with,
22 you know, individuals, companies, law firms, and, again, with
23 law enforcement on matters related to cybersecurity,
24 cybersecurity assessments, investigations, and incident
25 response.

NARKCHA3

Edman - Direct

1 Q. What did you do after FTI?

2 A. After FTI, my team and I, we moved to another consulting
3 firm called Berkeley Research Group. We started the cyber
4 operations and incident response practice there, continuing the
5 same sort of work in cybersecurity investigations.

6 Q. How about after that?

7 A. So we were there for about six and a half years, and then
8 my team and I, we left there to start NAXO in May of last year.

9 Q. That's where you currently are, right?

10 A. Correct.

11 Q. Do you have any relevant certifications?

12 A. I do.

13 Q. What are those?

14 A. So I hold a number of certifications related to
15 cryptocurrency investigations, including a Chainalysis Reactor
16 Certification, which is a tool often used in cryptocurrency
17 investigations.

18 I have a Chainalysis Ethereum Investigations
19 Certification, as well as a Chainalysis Investigative
20 Specialist Certification.

21 Q. Do you have any relevant professional affiliations?

22 A. I do.

23 Q. What are those?

24 A. I am a member of the Association for Computing Machinery,
25 which is a computer science organization. I'm a member of the

NARKCHA3

Edman - Direct

1 Institute for Electronics and Electrical Engineers, which is an
2 academic organization. And I'm also a member of the
3 institute -- of the International Association for Cryptologic
4 Research.

5 Q. Have you ever testified as an expert witness, either in
6 court or depositions?

7 A. I have.

8 Q. How many times?

9 A. Approximately ten to twelve.

10 Q. Where?

11 A. In numerous districts. I've submitted written testimony in
12 the Southern District of New York, I've testified in court in
13 California, most recently in the Southern District of Florida.

14 Q. Have you ever served as an expert in a case involving
15 cryptocurrency?

16 A. I have.

17 Q. Where?

18 A. That was the case I mentioned in the Southern District of
19 Florida.

20 Q. Have you ever assisted the United States Attorney's Office
21 for the Southern District of New York in their investigations?

22 A. I have on several occasions.

23 Q. Any particular examples?

24 A. There are a few examples. Probably the most well-known
25 example, when I was working for MITRE, I supported the FBI in

NARKCHA3

Edman - Direct

1 the Southern District of New York on an investigation into a
2 darknet drug marketplace called Silk Road, which is a
3 billion-dollar marketplace that people could go to, they could
4 buy drugs in exchange for cryptocurrency.

5 My work focused on identifying where this particular
6 website was hosted and developing tools and techniques for
7 seizing the website.

8 Later, while I was at FTI, I worked with S.D.N.Y.
9 again to analyze various cryptocurrency wallets that were
10 seized from the Silk Road website, as well as seized from the
11 defendant in that case, Ross Ulbricht, analyzed the wallets,
12 the wallet addresses contained therein, the transactions
13 between them, and established substantial links between the
14 defendant's personal wallets, as well as the cryptocurrency
15 wallets associated with the website.

16 And this analysis was later used in the defendant's
17 trial.

18 Q. When you say "S.D.N.Y.," do you mean the U.S. Attorney's
19 Office for the Southern District of New York?

20 A. Correct.

21 MR. MILLER: Your Honor, the defense would like to
22 certify Dr. Edman as an expert in cryptocurrency blockchain
23 analysis and cybersecurity investigations.

24 THE COURT: Any objection?

25 MS. NICHOLS: No objection.

NARKCHA3

Edman - Direct

1 THE COURT: All right. He is so received.

2 One moment. Sorry.

3 (Pause)

4 THE COURT: Let me just briefly explain, ladies and
5 gentlemen, that an expert witness is someone who, by education
6 or experience, has acquired learning or experience in a
7 specialized area of knowledge. Such a witness is permitted to
8 express his opinions on matters about which he has specialized
9 knowledge or training, and the parties are permitted to present
10 expert testimony to you on the theory that someone who is
11 experienced in a relevant field can assist you in understanding
12 the evidence or in reaching an independent decision on the
13 facts.

14 I will give you instructions at the close of the case
15 about how to assess the credibility of witnesses generally, and
16 those instructions apply to experts as well as other witnesses.
17 In weighing an expert's opinion, you may consider the expert's
18 qualifications, education, and reasons for testifying, as well
19 as all of the other considerations that ordinarily apply,
20 including all of the other evidence in this case.

21 If you find that the opinion of an expert is based on
22 sufficient data, education, and experience and the other
23 evidence does not give you reason to doubt his conclusions, you
24 would be justified in placing reliance upon his testimony.
25 However, you should not accept the witness' testimony simply

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1 because the witness has been received as an expert. The
2 determination of the facts, as you know, rests solely with you
3 in this case.

4 With that, you may proceed, Mr. Miller.

5 MR. MILLER: Thank you, your Honor.

6 BY MR. MILLER:

7 Q. In preparation for your testimony today, have you reviewed
8 any materials for this case?

9 A. I have.

10 Q. What have you reviewed?

11 A. I reviewed documents produced by OpenSea regarding
12 Mr. Chastain's OpenSea activity identified by the government as
13 being at issue in this case.

14 I also reviewed documents produced by ConsenSys, who
15 is a company that develops cryptocurrency wallet software used
16 by Mr. Chastain and many others.

17 I've also reviewed records associated with
18 Mr. Chastain's home Verizon FiOS internet connection.

19 Q. Have you relied on the materials you just discussed?

20 A. I have.

21 Q. What kind of methods have you used to form the opinions
22 that you will be testifying about today?

23 A. So the methods that I used to form my opinions, generally,
24 I relied on tools commonly used by professionals in my field,
25 including Etherscan, which is a blockchain explorer website

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Edman - Direct

1 commonly used in Ethereum-related investigations, as well as
2 Chainalysis Reactor, which is a blockchain forensics tool that
3 is often used by investigators, as well as law enforcement
4 agencies.

5 Q. Are there --

6 THE COURT: Try to articulate a little more clearly
7 and loudly.

8 Go ahead.

9 MR. MILLER: Thank you, Judge.

10 BY MR. MILLER:

11 Q. Are the methods that you just described widely used in your
12 industry?

13 A. They are.

14 Q. Did you prepare any disclosures that you provided to the
15 government in this case?

16 A. I did.

17 Q. Now, prior to your testimony today, have you ever spoken
18 with Mr. Chastain?

19 A. No. I saw him outside the courtroom, saw him at your
20 office yesterday, but I've never spoken to him.

21 Q. And you hadn't spoken with him, he didn't speak with you,
22 correct?

23 A. Correct.

24 Q. Are you being paid for your work in this case?

25 A. I am.

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1 Q. How are you being paid?

2 A. My time is billed in this matter at 850 an hour.

3 Q. Are your fees in this case contingent upon the outcome of
4 this case or any opinions that you're providing?

5 A. No, they're not.

6 Q. Based on your review of materials and the analyses that you
7 performed regarding this case, have you formed any opinions as
8 a result?

9 A. I have.

10 Q. What are your opinions? If you can go a little bit slower,
11 please. Thank you.

12 A. Sure.

13 So at a high level, I formed three opinions after
14 reviewing the documents available to me.

15 The first is that the evidence that I reviewed does
16 not indicate that Mr. Chastain used a VPN or other anonymizing
17 technology to hide his identity conducting his OpenSea
18 activity.

19 MS. NICHOLS: Objection to foundation.

20 THE COURT: All right. I trust, Mr. Miller, you're
21 going to develop a foundation.

22 MR. MILLER: Absolutely, yes.

23 THE COURT: I'll allow the witness to state his
24 opinions upfront, and then I'm sure we will go back and circle
25 around.

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1 MR. MILLER: Yes.

2 THE COURT: Go ahead.

3 Second?

4 A. My second opinion was that after reviewing Mr. Chastain's
5 cryptocurrency transactions, the evidence does not indicate
6 that he used a mixer or tumbler or non-KYC exchange to
7 obfuscate his cryptocurrency transactions.

8 Q. Was there a third opinion?

9 A. My third opinion is, again, after reviewing Mr. Chastain's
10 cryptocurrency transactions, his transactions appeared to me to
11 be consistent with the sophisticated cryptocurrency user who
12 keeps most of his crypto assets --

13 MS. NICHOLS: Objection.

14 THE COURT: Sustained.

15 Q. So we'll get back to your opinions in a moment, but let's
16 walk through some examples of some of the items that you just
17 sort of referenced. Okay?

18 A. Okay.

19 Q. So, first, what are some examples of cryptocurrency?

20 A. So some of the most well-known examples of cryptocurrency
21 include Bitcoin and Ethereum.

22 Q. Why are they called cryptocurrencies?

23 A. They're called cryptocurrency because they rely on
24 cryptography to secure and facilitate the transfer of value
25 between users of cryptocurrency.

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1 Q. What is cryptography?

2 A. Cryptography is high-level mathematical techniques for
3 encrypting, authenticating, and verifying information.

4 Q. What's a blockchain?

5 A. A blockchain is essentially how cryptocurrency transactions
6 are recorded and distributed to other users. You can think of
7 it sort of as like a ledger in your checkbook, where each entry
8 records a transfer, a value, except everybody on the blockchain
9 network is sharing the same ledger. So anyone can look at this
10 blockchain and see the balance of anyone else's account at any
11 point in time, for example, or see who they sent funds to or
12 received funds from.

13 Q. Where is it located?

14 A. So a blockchain is distributed, meaning that anyone can
15 access, download, view, a blockchain.

16 Q. Does it live on people's computers?

17 A. It certainly can, yes.

18 Q. Can you describe how, if at all, cryptocurrency works on a
19 blockchain?

20 A. So, again, cryptocurrency relies on a blockchain to record
21 transfers of value from one user to another.

22 Q. Is there more than one blockchain?

23 A. There are many.

24 Q. Like what?

25 A. So, generally, each cryptocurrency can have its own

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1 blockchain; so, for example, Bitcoin has its own blockchain,
2 Ethereum has its own blockchain. There are many other
3 examples.

4 Q. What is Ether?

5 A. So each blockchain cryptocurrency tends to have its own
6 sort of native form of currency. So in Bitcoin, its native
7 currency is a Bitcoin; on Ethereum, the native currency is
8 called Ether.

9 Q. How does one make a transfer on the blockchain?

10 A. So there are a number of different ways of making a
11 transfer on a blockchain. Typically, someone would use what's
12 called a wallet software, which is a tool for creating,
13 distributing cryptocurrency transactions to a blockchain.

14 Q. Are blockchain transactions public or private?

15 A. They are public.

16 Q. And how would one look and see what's happening on a
17 blockchain?

18 A. So there are several ways of viewing contents of a
19 blockchain. Perhaps the most complex is to run the blockchain
20 software yourself. You download the blockchain to your
21 computer, and you can inspect it on your computer.

22 More commonly, someone would use what's called a
23 blockchain explorer website, which is a website that lets you
24 view a blockchain just like you're looking at any other
25 website. You can view addresses on the blockchain,

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1 transactions that have occurred, transactions associated with
2 particular addresses on a blockchain and their balance or
3 whatever you want.

4 Q. Can anyone look at a blockchain?

5 A. Yes.

6 Q. You referenced this a little earlier. What is a wallet?

7 A. So a wallet, generally, refers to software used to manage
8 your cryptocurrency addresses. There are examples of wallets,
9 including MetaMask for one. Another common wallet is called a
10 ledger, but, in general, the wallet is responsible for managing
11 the cryptocurrency assets associated with whatever addresses
12 are within your wallet.

13 Q. So can you describe a little more what MetaMask is, that
14 you referenced?

15 A. So MetaMask is a software cryptocurrency wallet that you
16 run on your computer, and it basically runs in your web
17 browser, and it handles the complexity of creating wallet
18 addresses and sending funds either to other addresses within
19 your own wallet or to other people who have their own
20 cryptocurrency wallets.

21 Q. You referenced a ledger.

22 What is that?

23 A. So a ledger is what's called a cold storage wallet. A cold
24 storage wallet is a cryptocurrency wallet that's not connected
25 to internet. Since it's not connected to the internet, you

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1 can't create a cryptocurrency transaction and send it to a
2 blockchain directly from a cold storage wallet, but since it's
3 not connected to the internet, it reduces the risk of hacking
4 and theft, like you might have with a wallet that's running on
5 your computer.

6 Q. Does each wallet have its own address?

7 A. Each wallet can have many addresses with it.

8 Q. What are some of the reasons why a wallet might have more
9 than one address?

10 A. There can be any number of reasons why you would have
11 multiple addresses within your wallets. For example, we have
12 clients who have a business wallet address within their
13 cryptocurrency wallet and then they have another --

14 MS. NICHOLS: Objection.

15 THE COURT: Overruled.

16 A. So we have clients who have a business wallet address
17 within their cryptocurrency wallet and then have a personal
18 wallet address for personal cryptocurrency transactions.

19 You may have one wallet address for each service that
20 you interact with. So, for example, if you have accounts of
21 multiple cryptocurrency exchanges -- like Gemini or Coinbase
22 might be names you've heard of -- you may have one wallet
23 address for interacting with each of those exchanges or with
24 websites like OpenSea, for example.

25 You may also create a new wallet address for each

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1 purchase of cryptocurrency.

2 Q. And you can have multiple cryptocurrencies in one wallet
3 address, right?

4 A. You can, yes.

5 Q. In your experience and the investigations you've conducted,
6 have you ever seen users create multiple wallet addresses to
7 organize their cryptocurrency?

8 A. Yes.

9 Q. Have you seen, in the context of your investigations, users
10 do so for even tax purposes?

11 A. I would say it's less frequent, but, yes, I believe I have
12 seen that.

13 Q. What is a private key?

14 A. So a private key is a cryptographic secret key that
15 controls your cryptocurrency. You use this key to create and
16 cryptographically sign transactions, for example, to send
17 cryptocurrency from your wallet to another user. However, if
18 somebody gains access to your private key or steals your
19 private key, then they can steal all of your cryptocurrency.

20 Q. So if someone has multiple wallet addresses, is that the
21 same thing as having multiple wallets?

22 A. No.

23 Q. What's the difference?

24 A. So, again, a wallet can have multiple addresses within it,
25 each one of them called a wallet address.

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1 Q. Have you created some demonstratives to help explain your
2 testimony today?

3 A. I have.

4 MR. MILLER: At this time, your Honor, we'd like to
5 put up one of those demonstratives.

6 THE COURT: All right.

7 Any objection?

8 MS. NICHOLS: I don't know which one they want to put
9 up, your Honor.

10 MR. MILLER: Number 1, the file.

11 MS. NICHOLS: No objection.

12 THE COURT: All right. You may.

13 And, ladies and gentlemen, let me explain what that
14 means.

15 A demonstrative is something that is used to
16 demonstrate. The parties are permitted to show a demonstrative
17 to you to assist you in understanding the testimony of a
18 witness, where appropriate, and it's not uncommon with respect
19 to expert witnesses. The bottom line is, because it may help
20 you in evaluating and understanding the opinions that Dr. Edman
21 is offering you, I'm going to allow Mr. Miller to show this to
22 you and Dr. Edman to explain it to you.

23 But let me stress one thing: A demonstrative is not
24 evidence, it's not coming into evidence, it's not going to be
25 with you in the jury room; this is merely to help you

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1 understand the testimony that Dr. Edman is giving, which is
2 what the evidence is.

3 So, with that understanding, Mr. Miller, you may
4 proceed.

5 MR. MILLER: Thank you.

6 BY MR. MILLER:

7 Q. Dr. Edman, can you explain this demonstrative that you
8 created and why it's helpful in your testimony?

9 A. I don't have it in front of me.

10 Q. Oh. It's not published?

11 THE COURT: You may.

12 MR. MILLER: Thank you, Judge.

13 A. So this demonstrative sort of provides an analogy between a
14 cryptocurrency wallet on the left - in particular, that's a
15 screenshot of a MetaMask cryptocurrency wallet - and a
16 traditional wallet on the right.

17 Each account within a MetaMask wallet corresponds to a
18 wallet address, sort of like in a traditional wallet how you
19 might have multiple slots, and then a card in each slot
20 corresponds to an account like a credit card.

21 Q. What is on the left-hand side of the screen here?

22 A. So the left-hand side of the screen is a screenshot of a
23 MetaMask showing multiple cryptocurrency accounts within that
24 MetaMask wallet, where each account is identified by a wallet
25 address.

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1 Q. And what does that mean, account 1, account 2, account 3,
2 that you have there on your screen?

3 A. So, those are just friendly names that MetaMask shows you.
4 The wallet addresses - I put some examples on the cards on the
5 right - as you can see, they're not easy to read out verbally,
6 they look kind of like a long string of random letters and
7 numbers. So you can give them names like account 1, account 2,
8 or whatever you want to name them within MetaMask.

9 Q. That's within the MetaMask software, right?

10 A. Correct.

11 Q. Now, MetaMask accounts are identified by these account
12 numbers like for traditional account numbers, right?

13 A. Correct.

14 Q. What is a hot wallet?

15 A. So a hot wallet generally refers to a wallet - typically, a
16 software wallet like MetaMask - that is connected to the
17 internet, usually runs on your computer, and lets you conduct
18 transactions easily and quickly from your computer. Since it's
19 connected to the internet, you can connect to a block chain and
20 send transactions to the blockchain.

21 However, since it's on your computer and connected to
22 the internet, your wallet, your hot wallet, can be vulnerable
23 to hacking, theft, if somebody gains access to your computer.

24 Q. What's a cold wallet?

25 A. So a cold wallet, or a cold storage wallet, again, is a

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1 wallet that is not connected to the internet, it's generally
2 considered more secure than a hot wallet. You can think of it
3 kind of like a safety deposit box for your cryptocurrency.

4 Q. Does a cold wallet have an account address that's assigned?

5 A. A cold storage wallet can have multiple wallet addresses
6 just like a software wallet can.

7 Q. Is having a hot wallet better than a cold wallet or
8 vice versa?

9 A. There are tradeoffs between the two. Like I mentioned, a
10 cold storage wallet is generally considered more secure, but
11 they can be kind of cumbersome to use if you're going to create
12 several transactions. A software hot wallet connected to the
13 internet is easy and user-friendly, but it carries with it
14 security risks of running on your computer.

15 Q. And a software hot wallet is like MetaMask?

16 A. Correct.

17 Q. In your experience and in your investigations, do people
18 commonly have both hot and cold wallets?

19 A. Yes. It's generally considered a best practice to keep at
20 least most of your crypto assets in a cold storage wallet. If
21 you prefer to use a hot wallet, then you can transfer some
22 assets to your hot wallet, and not put every transaction if you
23 want to, and then move funds back into your cold storage
24 wallet.

25 Q. And we're talking about individuals. What about entities

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1 like cryptocurrency exchanges, do they use similar hot wallets
2 and cold wallets?

3 A. Yes, absolutely. For sophisticated cryptocurrency
4 companies -- like exchanges, like Gemini or Coinbase -- it's
5 industry standard to basically not lump all of the customers'
6 cryptocurrency into one hot wallet. They typically have a
7 number of addresses associated with customers and customer
8 deposits in a hot wallet, where they will periodically move
9 funds into a cold storage wallet for safekeeping. And if they
10 at a later time need to move funds from a cold storage wallet
11 back into a hot wallet to facilitate customer withdrawals or
12 transactions or something like that, then they can. But,
13 generally, the principle of not keeping all of your eggs in one
14 basket certainly applies to cryptocurrency.

15 Q. I think you testified about this already, but having a cold
16 wallet is almost like having a safety deposit box at a bank?

17 A. Correct.

18 Q. Now let's discuss how a user creates an address on
19 MetaMask.

20 And I think you created some demonstratives to help
21 explain this for the jury as well, right?

22 A. Yes, I did.

23 Q. So I'd like to show -- the file numbers are 2 and 3 of the
24 demonstratives.

25 THE COURT: All right. Any objection?

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1 MS. NICHOLS: No objection.

2 THE COURT: All right. That's subject to the same
3 instructions that apply to all the demonstratives you'll see
4 during Dr. Edman's testimony.

5 You may proceed and you may publish.

6 MR. MILLER: Thank you, your Honor. Let's put up
7 number 2 first.

8 Q. Can you explain this demonstrative?

9 A. So this demonstrative is just a series of screenshots
10 showing how easy it is to create a new account or new wallet
11 address within MetaMask. So you can see all of your accounts,
12 there's a button for creating an account, you can optionally
13 give it a friendly name; by default, it will just cycle through
14 account 1, 2, 3, 4, and so on. You can click Create, and once
15 that's done, you have a new wallet, identified by whatever name
16 you gave it, and a wallet address, a portion of which is shown
17 to you in the MetaMask software at the top, the wallet address
18 highlighted in the third picture at the top.

19 MR. MILLER: Now if we could go to the third
20 demonstrative.

21 Q. Can you explain this one to the jury?

22 A. Yes. So MetaMask includes functionality to transfer funds,
23 basically, within addresses within your own wallet. For
24 example, say you're going to make a purchase and you don't have
25 enough cryptocurrency in one of your accounts within your

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Edman - Direct

1 MetaMask wallet to make that purchase; you can combine funds
2 from other accounts into one and then use that account to make
3 your purchase.

4 Q. How much of a process is it to move any kind of
5 cryptocurrency from one of the accounts on your MetaMask wallet
6 to the other?

7 A. It's very simple. It's just a couple of buttons.

8 Q. How long does it take?

9 A. Creating the transaction within MetaMask certainly takes
10 less time than it takes a blockchain to receive it, process it,
11 and distribute it, but on the order of maybe minutes, maximum.

12 Q. What about transferring between wallet addresses for a
13 MetaMask wallet?

14 A. My apologies. So it takes only seconds to create a wallet
15 address, but transferring between MetaMask wallet addresses
16 could take maybe a couple of minutes, total.

17 Q. Now, are wallet addresses on the blockchain anonymous?

18 A. It's a common misconception, but wallet addresses on a
19 blockchain are not anonymous. They're actually what's called
20 pseudonymous.

21 Q. What is that?

22 A. So anonymous formally means not being identifiable within a
23 set of subjects, called anonymity in a sense. What that means
24 for cryptocurrency, what that would mean, if it were true, is
25 that for a given transaction you couldn't identify or

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1 distinguish between wallet addresses, you couldn't identify
2 which wallet address created a particular transaction or maybe
3 to whom that transaction was sent.

4 What's actually true, though, is that on Ethereum, for
5 example, a wallet address sort of acts as like a pseudonym,
6 kind of like how you might have a pseudonym on Twitter or, you
7 know, an email account connect as a pseudonym of which you
8 might have many. On a blockchain, your wallet address is a
9 pseudonym. So you can look at any transaction on a blockchain,
10 see the address of the sender of that transaction, and you can
11 see the address of the recipient of that transaction. Each
12 wallet address is distinct and identifiable from one another.

13 MR. MILLER: So, sorry, maybe we could look at
14 demonstratives number 4 and 5. Show that to the Court and the
15 government.

16 THE COURT: Any objection?

17 MS. NICHOLS: No, your Honor.

18 THE COURT: All right. You may proceed. Subject to
19 the same instructions, you may publish.

20 MR. MILLER: Thank you, your Honor.

21 So let's look at slide 4, if we can publish that up.

22 Q. You just described sort of the difference between something
23 being anonymous or pseudonymous on the blockchain.

24 How does demonstrative number 4 help explain that?

25 A. So anonymity means that users are indistinguishable from

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Edman - Direct

1 one another. So in this demonstrative, on the left you have a
2 set of senders, indistinguishable from one another, and on the
3 right you have a set of recipients, again, indistinguishable
4 from another. Anonymity would mean that you can identify which
5 of the senders sent which transaction to which recipient.

6 (Continued on next page)

N4R3CHA4

Edman - Direct

1 Q. Okay. So let's look at number five then.

2 A. So on Ethereum, the wallet addresses are pseudonyms, so
3 pseudonymity means that each of the actors is uniquely
4 identified by an address. You can look at the transaction on
5 the blockchain, you can see the address of the sender, and you
6 can see the address of the recipient. Using a blockchain
7 explorer website, you can see details of the transactions such
8 as whether they sent cryptocurrency or transferred an NFT for
9 example.

10 Q. So, what other things on the internet are pseudonymous?

11 A. I think I gave a few examples earlier. But you can think
12 of an e-mail address sort of as a pseudonym. If some people
13 create an e-mail account with their real name, not everybody
14 does. Twitter would be another example, Instagram. People
15 often use pseudonyms or funding names for something for their
16 accounts, rather than necessarily their own name.

17 Q. Is there any importance in sort of making this distinction
18 between pseudonymous and anonymous as it refers to blockchain
19 transactions?

20 A. Yes. Since the transactions are pseudonymous, it means you
21 can look at the transactions, look at a wallet address, and the
22 pseudonym, and see all of the activity reflected with that
23 pseudonym or that wallet address.

24 Q. We've heard testimony at this trial about NFTs or
25 non-fungible tokens. Are NFTs uniquely identified?

N4R3CHA4

Edman - Direct

1 A. They are.

2 Q. How?

3 A. So each NFT has its own unique identifier that
4 distinguishes one NFT from another. This differs from
5 cryptocurrency, where if I have one Ether and you have one
6 Ether, our Ether are indistinguishable. They are the same as
7 one another.

8 Whereas if I have one NFT and you have one NFT, those
9 NFTs are by definition distinct and distinguishable.

10 Q. How does it compare -- well, withdrawn.

11 When you said earlier about cryptocurrency not being
12 distinguishable. Is that the same as being fungible?

13 A. Yes.

14 Q. How do NFTs relate to cryptocurrency?

15 A. So similar to cryptocurrency, NFTs rely on blockchain to
16 facilitate the transfer of an NFT from one user to another.

17 Q. So are you familiar, sir, with the OpenSea platform?

18 A. I am.

19 Q. How, if at all, does the OpenSea platform interact with the
20 blockchain?

21 A. So OpenSea relies on a blockchain to facilitate the
22 transfer of cryptocurrency from, say, the buyer of an NFT to
23 the seller, as well as transferring the NFT from the seller to
24 the buyer.

25 Q. Does a person need an OpenSea account to use OpenSea?

1 A. Not in the traditional sense. So, on many websites, if you
2 go to sign up, you need to give your e-mail address, put in a
3 password, maybe a user name to create an account before you can
4 use the website. Think of eBay, for example.

5 On OpenSea, your wallet address basically acts as your
6 account. You connect your cryptocurrency wallet, like Meta
7 Mask, to the OpenSea website, and then you can choose which of
8 the accounts within your Meta Mask wallet you want to use in
9 connection with your OpenSea activity.

10 Q. So, when a person makes an OpenSea account, does OpenSea
11 give them their own OpenSea wallet?

12 A. No.

13 Q. How does one buy NFTs on OpenSea?

14 A. So, buying an NFT on OpenSea is not all that different than
15 buying an item on eBay, for example. You can browse the
16 website, look at different NFTs for sale, and how much they
17 cost. You can search for NFTs that have certain properties
18 that you are interested in. You can add them to a shopping
19 cart, like on any other website, and then complete the checkout
20 process where you connect your wallets to OpenSea, pay for the
21 items that you put into your cart as cryptocurrency, complete
22 the checkout, and you receive your NFT.

23 There is also an option to have the NFTs that you
24 purchased sent to a different wallet address. Sort of like on
25 eBay maybe you put in one address for payment and another

N4R3CHA4

Edman - Direct

1 address for shipping. Similarly, on OpenSea, you can pay with
2 one address and have your NFT delivered to a different address.

3 Q. What are some common types of NFTs?

4 A. So NFTs are -- they can really be anything. But they are
5 most commonly used to represent digital artwork. Often,
6 cartoon characters where the cartoon figures have different
7 properties like additional facial features, different clothing,
8 facial expressions, and so on.

9 Q. So I'd like to walk through, sir, the process of buying an
10 NFT on the OpenSea website. And did you create some
11 demonstratives for the Court and the jury to explain that
12 process?

13 A. I did.

14 MR. MILLER: So at this time we'd like to show file
15 number 7, actually instead of 6. Can you bring it up for the
16 Court and the government. There is two pages to it.

17 THE COURT: Any objection?

18 MS. NICHOLS: No objection.

19 THE COURT: You may proceed.

20 Q. If we can publish that for the jury, please.

21 Dr. Edman, can you walk the jury through this
22 demonstrative which has two pages.

23 A. Sure. So this first page is just sort of a screenshot of
24 OpenSea showing a set of NFTs that are listed for sale. You
25 can see the ID number of the NFT, the collection, certain

1 properties about, it how much the NFT costs, you can filter
2 based on show me all the cats wearing a top hat, for example.
3 If you identify an NFT you like, there is a button there that
4 you can add it to your cart.

5 Q. So let's go to page two, assuming we've now added it to our
6 cart.

7 A. So in order to complete the purchase, you need to connect
8 your wallet, in this case we're using Meta Mask, you need to
9 connect your wallet to the OpenSea platform. When you do so,
10 you can select which accounts within your Meta Mask wallet that
11 you want to use in connection with OpenSea. You don't have to
12 select them all. You can choose one, and you can also change
13 it later.

14 You add the NFT to your cart, and then you can
15 complete checkout when you've identified the NFTs that you want
16 to purchase, and then you complete purchase.

17 Like I mentioned earlier, as part of that, you can
18 have the NFT sent to a different wallet address than the one
19 that you are using for payments.

20 Q. So, whichever wallet address you send to, that's where the
21 NFT is going to be stored?

22 A. Correct.

23 Q. That's on the blockchain?

24 A. Correct.

25 Q. Can OpenSea users see other people's activity on OpenSea?

N4R3CHA4

Edman - Direct

1 A. Yes, you can look at the blockchain and see previous
2 transactions that have occurred.

3 Q. Can anyone from the public see trades on OpenSea?

4 A. Yes, anyone from the public can go look at a blockchain
5 explorer and view trades that have occurred on OpenSea.

6 Q. Dr. Edman, I want to go back to your opinions in this case
7 that you sort of outlined earlier on. Let's start with the
8 first opinion.

9 What was that again?

10 A. So my first opinion was that, after viewing the evidence
11 available to me, there was no indication that Mr. Chastain used
12 a VPN or another anonymizer in connection with the OpenSea
13 activity identified by the government in this case.

14 Q. What's the basis for that opinion?

15 A. The basis for that opinion is I reviewed records produced
16 by OpenSea, I reviewed records produced by ConsenSys, the
17 developer of Meta Mask, as well as records produced by
18 Mr. Chastain's home internet service provider, Verizon Fios.
19 And in almost every single case, the transactions were
20 conducted from an IP address associated with Mr. Chastain's
21 home internet connection.

22 Q. All those records were produced by the government, right?

23 A. I'm sorry?

24 Q. All those records were produced by the government in this
25 case?

1 MS. NICHOLS: Objection.

2 THE COURT: Sustained.

3 Q. You mentioned VPN. What's a VPN?

4 A. So a VPN is a tool that can be used to hide your IP address
5 on the internet. When you connect to a website directly, you
6 are on your home internet connection, you open a web browser,
7 you connect to a website. That website can see your IP
8 address, and based on that IP address, they can infer some
9 things about you, like maybe the region or the town that you
10 live in, whether it's a home or a business. If it is a
11 business, sometimes what business. Maybe what other websites
12 you visited.

13 When you use a VPN instead of connecting directly to a
14 website, you connect to a VPN server operated by a VPN
15 provider. And then from there, your web traffic goes to the
16 website. From the perspective of the website, they see the IP
17 address of the VPN address as opposed to your home IP address.
18 Similarly your ISP sees you are connected to a VPN service, but
19 since the traffic is encrypted, they don't know what type.

20 Q. What does VPN stand for?

21 A. Virtual private network.

22 Q. What's IP address?

23 A. An IP address is sort of like a phone number for a computer
24 or a network of computers on the internet.

25 Q. Are all IP addresses unique?

N4R3CHA4

Edman - Direct

1 A. So on the internet, IP addresses are unique, but multiple
2 computers or multiple networks can share an IP address.

3 Q. If you could explain for the Court and the jury how that
4 would work in your home, for example?

5 A. So, on your home internet connection, whether you have
6 Spectrum or Fios or whatever, your ISP assigns you an IP
7 address. But, there may be multiple devices at your home.
8 Like your cell phone, laptop computers, whatever devices you
9 have. They're all sharing that same IP address.

10 Q. So can anybody use a VPN?

11 A. Yes.

12 Q. How?

13 A. There are free and paid VPN service providers. You can
14 basically Google VPN provider, and find any number to choose
15 from.

16 Q. Does using a VPN require any kind of specialized knowledge?

17 MS. NICHOLS: Objection.

18 THE COURT: Overruled.

19 A. Not particularly, no.

20 Q. How can you tell if somebody tried to use a VPN?

21 A. So there are a number of well-known VPN providers as well
22 as databases that categorize IP addresses and associate them
23 with a VPN service provider.

24 Q. In this case, with the records that you reviewed, did you
25 see any evidence of VPN usage here?

N4R3CHA4

Edman - Direct

1 A. No.

2 Q. How do you know?

3 A. Because again, I reviewed OpenSea records, ConsenSys
4 records, as well as records produced by Verizon Fios which
5 identified Mr. Chastain's home IP address as being associated
6 with his OpenSea activity.

7 Q. That was with respect to the computers that were in his
8 home?

9 A. Correct.

10 Q. Let's now move on to your second opinion. What was it?

11 A. My second opinion was that, based on my review of
12 Mr. Chastain's cryptocurrency transactions, there is no
13 indication that he used a mixer, tumbler, or a non-KYC exchange
14 to obfuscate his cryptocurrency transactions.

15 Q. There was a lot of terminology in there. What's a mixer?

16 A. A mixer is a way of obfuscating a cryptocurrency
17 transaction. Think of sort of a box that a number of different
18 users throw their cryptocurrency into it. It mixes the
19 cryptocurrency up and sends it to recipients on the other side.
20 The idea is that somebody watching this box sees some funds
21 going into it, see some cryptocurrency going out. They can't
22 link a sender to a particular recipient.

23 Q. That's a kind of technology or software?

24 A. It is.

25 Q. What is a tumbler? You referenced that.

N4R3CHA4

Edman - Direct

1 A. Tumbler is essentially the same thing. Two different terms
2 for the same concept.

3 Q. Finally you referred to a non-KYC exchange. What is that?

4 A. So exchange refers to cryptocurrency exchange that lets you
5 swap U.S. dollars for cryptocurrency or one type of
6 cryptocurrency for another.

7 KYC stands for know your customer. Particularly in
8 the U.S., if you sign up for a cryptocurrency exchange,
9 typically you are expected to provide some identifying
10 information about yourself. You may have to provide a Social
11 Security number, a driver's license, some sort of information
12 proving your identity to the exchange.

13 A non-KYC exchange, typically located overseas, they
14 do not require any sort of identifying information.
15 Cryptocurrency swaps to another cryptocurrency, and lets users
16 withdraw it or transfer it automatically, and don't require any
17 sort of identifying information from users.

18 So from an investigative perspective, non-KYC
19 exchanges can be somewhat of a challenge.

20 Q. So, I believe you prepared another demonstrative to aid the
21 Court and the jury in your testimony today regarding the
22 subjects. This is file number 6, if we can show it to the
23 Court and the government, please.

24 THE COURT: Any objection?

25 MS. NICHOLS: No, your Honor.

N4R3CHA4

Edman - Direct

1 THE COURT: All right. You may proceed.

2 MR. MILLER: Thank you, Judge. If we can please
3 publish this demonstrative.

4 A. So this demonstrative gives an example of a mixer. You can
5 see on the left there are three different users, each
6 identified by a wallet address. They send the transaction to
7 the mixer. And then at some points, following the
8 transactions, you see three transactions going out. You can
9 see the wallet addresses of the recipients, but you don't know
10 which input transaction corresponds to which output
11 transaction. So it makes it more difficult to follow the flow
12 of funds from one user to the next through a mixer.

13 Q. Can anybody use a mixer?

14 A. Anybody can use a mixer. There are a number of options
15 available, and instruction for using them.

16 Q. Did you see any evidence of use of a mixer in this case?

17 A. I did not.

18 Q. What makes you say that?

19 A. I reviewed the cryptocurrency transactions identified by
20 the government associated with Mr. Chastain's OpenSea activity,
21 both in Etherscan as well as in chainalysis reactor, which is a
22 chain forensics tool. And I did not see any of the
23 transactions involving a mixer.

24 Q. Dr. Edman, if you can try to keep your voice up a little
25 bit, please.

1 Now, can people on the blockchain see if a person is
2 using a mixer or a tumbler?

3 A. So there are a number of well-known mixers and tumblers.
4 Sites like Etherscan and tools like chainalysis reactor
5 identify mixers and tumblers, mainly for compliance purposes,
6 so that exchanges can detect high-risk transactions. But you
7 can also, as you are looking at these transactions, see if any
8 of them involved a mixer or tumbler or non-KYC exchange.

9 Q. You referenced the non-KYC exchange and you testified about
10 that. Why might somebody use a KYC exchange versus a non-KYC
11 exchange?

12 MS. NICHOLS: Objection.

13 THE COURT: Overruled.

14 A. So, a non-KYC exchange can be useful if you are trying to
15 obfuscate the flow of funds. The KYC exchange is what most
16 people think of when they think of a cryptocurrency exchange,
17 at least here in the U.S.

18 Q. In this case, did you see any evidence or usage from your
19 analysis of a non-KYC exchange?

20 A. I did not.

21 Q. Now, turning to the transactions in this case. Did you
22 analyze them?

23 A. I did.

24 Q. How did you go about doing that?

25 A. I used Etherscan, which again is a blockchain explorer

1 website. Chainalysis reactor to review the transactions and
2 associated wallet addresses.

3 Q. Let's start with the Etherscan. Can you explain a little
4 bit more about how somebody can use Etherscan to look at the
5 blockchain? Kind of break it down for us.

6 A. So, Etherscan, you can use it like you use any other
7 website. You can search for particular wallet addresses or
8 particular entities, you can search for certain transactions.
9 You can view all transactions associated with a wallet address,
10 or for a given transaction, you can view the wallet addresses
11 associated with that transaction.

12 Q. In this case, you used Etherscan?

13 A. I did.

14 Q. Now, turning your attention to your third opinion. Please
15 provide that for the Court and jury, but please don't discuss
16 anything about sophisticated users.

17 MS. NICHOLS: Objection.

18 THE COURT: Well, why don't you try to articulate your
19 third opinion again, since Mr. Miller has given you some
20 guidance on how to do it. And I'll rule on any objection, if
21 there is one.

22 A. My third opinion is, after reviewing Mr. Chastain's
23 cryptocurrency transactions, his transactions in my opinion
24 were consistent with a user who keeps most of his
25 cryptocurrency funds in a cold storage wallet, moves them to a

N4R3CHA4

Edman - Direct

1 hot wallet to conduct various transactions, and then moves
2 funds back into a cold storage wallet for safekeeping.

3 Q. Is that common?

4 A. That is common.

5 Q. Why?

6 A. Again, it goes back to the principle of don't keep all of
7 your eggs in one basket. A cold storage wallet is generally
8 considered more secure than a hot wallet, so it makes sense you
9 would keep funds in a cold storage wallet when possible.

10 Q. Can you explain again, obviously we've gone through a lot
11 of terminology here today. Can you please explain for the
12 Court and jury how you used Etherscan to review the NFT
13 transactions at issue in this case?

14 A. So, I reviewed each of the transactions identified by the
15 government, I entered them into Etherscan, which lets me view
16 details about the transaction, like when it occurred, who the
17 sender was, who the recipient was, how the NFT was transferred.
18 And then I reviewed each of those within Etherscan.

19 Q. What specifically did you do with this application called
20 chainalysis?

21 A. So chainalysis lets you sort of visualize wallet addresses
22 and links between them as a graph. Where a wallet address or a
23 group of wallet addresses, like a node or a dot on that graph.
24 And transfers of crypto assets between them are arrows between
25 nodes on that graph.

N4R3CHA4

Edman - Direct

1 Q. Did you review any government exhibits in conducting that
2 analysis?

3 A. I did.

4 Q. What kind of exhibits?

5 A. They were exhibits produced by the government which were
6 also from Etherscan.

7 Q. From Etherscan you said?

8 A. Correct.

9 Q. Did you also review the defendant's wallet activity in this
10 case?

11 MS. NICHOLS: Objection.

12 THE COURT: You may answer yes or no.

13 A. Yes.

14 Q. How did you do so?

15 A. I used again Etherscan as well as chainalysis reactor to
16 view and visualize Mr. Chastain's cryptocurrency wallet
17 activity.

18 Q. Did there come a time where you actually looked on
19 Mr. Chastain's computer?

20 A. Yes.

21 Q. How did that happen?

22 A. This was in the presence of counsel. I reviewed
23 Mr. Chastain's Meta Mask hot wallet. I reviewed each of the
24 accounts within that hot wallet and the addresses associated
25 with them, and verified that those addresses were associated

N4R3CHA4

Edman - Direct

1 with transactions identified by the government.

2 MS. NICHOLS: Objection. Move to strike.

3 THE COURT: Let me ask you to clarify. You reviewed a
4 laptop in the presence of counsel. But how did you know or
5 were you able to, by analyzing content on the laptop, match
6 that with transactions that you said had been identified by the
7 government?

8 In other words, independent of anyone telling you this
9 is Mr. Chastain's laptop, you would be able to connect that to
10 evidence related to this case?

11 THE WITNESS: So, from the OpenSea records, and also
12 from the government's, I could identify the wallet addresses
13 and transactions attributed to Mr. Chastain. And then on the
14 Meta Mask wallet, I viewed the addresses contained within that
15 wallet and verified that those addresses matched the activity
16 attributed to Mr. Chastain.

17 MS. NICHOLS: Objection to time frame.

18 THE COURT: Overruled.

19 Q. Did you happen to also review any cold wallets?

20 A. I did.

21 Q. How did you do that?

22 A. I viewed Mr. Chastain's ledger, cold storage wallet.

23 MS. NICHOLS: Objection.

24 THE COURT: Can you explain, when you say it was his,
25 how do you know that?

N4R3CHA4

Edman - Direct

1 THE WITNESS: It was represented to me by counsel that
2 it belonged to him.

3 THE COURT: So sustained and the jury will disregard
4 that testimony.

5 Q. Let me rephrase the question.

6 In terms of the other wallet address, other than the
7 ones that you looked at within Meta Mask, were you able -- did
8 you recognize that from any of the review of the materials in
9 this case?

10 MS. NICHOLS: Objection.

11 THE COURT: I'll allow it.

12 Yes or no.

13 A. I'm sorry. Could you restate the question?

14 Q. Sure.

15 MR. MILLER: Actually, would you mind if the court
16 reporter read that back, please.

17 THE COURT: I'll read it back.

18 "In terms of the other wallet addresses, other than
19 the ones you looked at within Meta Mask, were you able -- did
20 you recognize any of that from any of the review of the
21 materials in this case?"

22 A. Yes.

23 Q. And how?

24 A. Based on my analysis in Etherscan as well as chainalysis
25 reactor identified the address associated with this cold

N4R3CHA4

Edman - Direct

1 storage wallet device being -- exchanging funds with addresses
2 associated with Mr. Chastain's Meta Mask wallet.

3 MS. NICHOLS: Objection and move to strike.

4 THE COURT: Overruled.

5 Q. This was in the year 2023, correct?

6 A. Correct.

7 Q. In your expert opinion, are you able to determine whether
8 there were, as you just described, two wallets back in 2021?

9 A. So based on the records produced by OpenSea, which were
10 from the time period of 2021, identifying Mr. Chastain's
11 OpenSea activity, within those records, they attribute a wallet
12 address to wallet software. I reviewed these records, and
13 wallet addresses were attributed to Meta Mask at the time.
14 Also based on the way that wallet addresses are created by Meta
15 Mask and also by cold storage wallets like ledger, all of the
16 addresses within that wallet are related. So rather than
17 randomly generating one new cryptographic private key for every
18 account that you create within Meta Mask, when you create the
19 wallet, you actually create what's called a seed or a recovery
20 phrase. And then all of your private keys are derived from
21 that seed. So if one address is within the wallet, you know
22 that the other addresses are related and derived from the same
23 seed.

24 Q. So, based on your review and analysis and your expert
25 opinion in this case, you were able to determine that there

N4R3CHA4

Edman - Direct

1 were two wallets back in 2021?

2 MS. NICHOLS: Objection.

3 THE COURT: Sustained as to form.

4 Q. So, what conclusion, based on your experience and expert
5 opinion in this case, what opinion did you draw, what
6 conclusion did you draw based on your review of this
7 information as to how many wallets there were in 2021?

8 A. So based on my review and analysis, my conclusion is that
9 there were two separate wallets. One of which was a Meta Mask
10 wallet, and the other was most likely a cold storage wallet.

11 Q. Now, I'd like to show you what's been marked for
12 identification as Defense Exhibit 49, please. If we could just
13 show that to the witness, the Court and the government.

14 Do you recognize this document?

15 A. I do.

16 Q. How?

17 A. I created this.

18 Q. Did you rely on the government exhibits to create it?

19 A. I did.

20 Q. Which ones?

21 A. The government exhibits identified at the bottom which
22 include records from ConsenSys, records from Etherscan, I don't
23 recall exactly what 455 is. I believe that's a Verizon record.

24 Q. And did you also rely on your analysis and testimony that
25 you just described for how you determined there were two

N4R3CHA4

Edman - Direct

1 wallets?

2 A. I did.

3 Q. Did you use your knowledge and experience as an expert in
4 cryptocurrency and blockchain in creating this exhibit?

5 A. I did.

6 Q. Does this exhibit fairly and accurately reflect the source
7 materials that you reviewed for this exhibit?

8 A. It does.

9 MR. MILLER: Pursuant to the stipulations 1001 and
10 1005 and this testimony, we move for the admission of DX 49.

11 MS. NICHOLS: No objection.

12 THE COURT: All right. Admitted.

13 (Defendant's Exhibit 49 received in evidence)

14 MR. MILLER: Can we publish it?

15 THE COURT: You may.

16 And ladies and gentlemen, I would describe this as a
17 chart or summary in that sense it's very similar to the charts
18 and summaries that were admitted the other day pursuant to the
19 rule that I described that allows a party, where there is
20 voluminous evidence or information to, for your convenience,
21 put it into chart or summary form.

22 But I remind you, same instructions apply here, which
23 is to say what weight, if any, you give this evidence, as all
24 evidence, is up to you. And obviously it's only as valuable as
25 the underlying evidence as well.

N4R3CHA4

Edman - Direct

1 You may proceed.

2 MR. MILLER: Thank you, Judge. Publish this for the
3 jury with the permission of the Court?

4 THE COURT: It's already done.

5 MR. MILLER: My apologies. Getting tired.

6 Q. Can you explain what this chart shows, please?

7 A. So this chart is a graph that I created in chainalysis
8 reactor that shows Mr. Chastain's cryptocurrency activity
9 associated with his OpenSea transactions. So on the left we
10 have one wallet, which in my opinion is the ledger cold storage
11 wallet. The addresses in the middle correspond to a second
12 wallet, the Meta Mask hot wallet, which is used to interact
13 with OpenSea. On the right we have transactions with OpenSea.

14 Q. What are all these dots?

15 A. Each of the dots, at least the dot on the left and all of
16 the dots in the middle, represent cryptocurrency wallet
17 addresses. One on the left associated with the cold storage
18 wallet, the addresses in the middle associated with hot wallet,
19 and the dot on the right associates -- identifies addresses
20 associated with OpenSea.

21 Q. In the middle, I think we see that on some occasions where
22 there's transfers between OpenSea and a cold wallet, there
23 might be multiple jumps, right?

24 A. Correct.

25 Q. What are those?

N4R3CHA4

Edman - Direct

1 A. Those are intermediary addresses. Funds were transferred
2 from one address within the Meta Mask wallets to another
3 address within the Meta Mask wallet, and then used to make
4 purchase, or in some instances transferred to another address
5 within the same Meta Mask wallet.

6 Q. In terms of creating additional addresses within the Meta
7 Mask wallet, that's what you testified about earlier with those
8 demonstratives?

9 A. Correct.

10 Q. Now, looking at Defense Exhibit 49, did you form any
11 opinions with respect to this chart?

12 A. I did.

13 Q. What were they?

14 A. My opinion is, based on a review of the evidence cited in
15 Mr. Chastain's cryptocurrency transactions, that his
16 transactions are consistent with a user with two wallets, one
17 of which is a cold storage wallet and another is a hot wallet,
18 and moves funds from cold storage to the hot wallet to conduct
19 transactions and then moves funds back into the cold storage
20 wallet.

21 Q. And my apologies if you testified about this before. But
22 is it a fairly simple process to move within one of these dots,
23 within the hot wallet?

24 A. Yes, there is essentially a button in Meta Mask that lets
25 you move funds from one account in your wallet to another.

N4R3CHA4

Edman - Cross

1 MR. MILLER: The Court's indulgence, your Honor. One
2 moment.

3 No further questions at this time, your Honor.

4 THE COURT: Cross-examination.

5 MS. NICHOLS: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MS. NICHOLS:

8 Q. Good afternoon, Dr. Edman.

9 A. Good afternoon.

10 Q. So you've been a paid consultant for at least 10 years; is
11 that right?

12 A. That sounds right.

13 Q. And you said some of your partners are former law
14 enforcement, correct?

15 A. Correct.

16 Q. But you're not former law enforcement, correct?

17 A. I was a contractor supporting federal law enforcement.

18 Q. Okay. So you were a paid contractor?

19 A. I received a salary, correct.

20 Q. And you're paid for your work for Mr. Chastain here, right?

21 A. I am.

22 Q. You are being paid at the rate of 850 an hour you said?

23 A. That's what my time is billed at. That's not what I
24 receive personally.

25 Q. Your time is billed at 850 an hour?

N4R3CHA4

Edman - Cross

1 A. Correct.

2 Q. And you received an upfront retainer of \$12,000, correct?

3 A. I did not, no.

4 Q. How much have you been paid so far for your work in this
5 case?

6 A. I think the total amount received so far is about 15,000.

7 Q. And you planned your testimony with the defense, correct?

8 MR. MILLER: Objection.

9 THE COURT: Overruled. You can answer.

10 A. We discussed my testimony.

11 Q. And you had several calls to discuss your testimony, right?

12 A. We did, yes.

13 Q. At least one in-person meeting, correct?

14 A. Yes.

15 Q. And you reviewed documents that they sent you, right?

16 A. I did.

17 Q. And they explained to you what those documents were, right?

18 A. They did. They also provided additional documents from I
19 believe it was Wilmer Hale, counsel for OpenSea, that described
20 the nature of the documents and what was contained in them.

21 Some of the documents, for example, the Verizon Fios documents
22 included additional information, attesting to the documents.

23 Q. My question was just they gave you documents, right?

24 THE COURT: Counsel, I think you also asked whether
25 they explained what the documents were.

N4R3CHA4

Edman - Cross

1 MS. NICHOLS: You're right, your Honor. I'm sorry.

2 Q. You produced draft exhibits to them, correct?

3 A. I did.

4 Q. And they provided you feedback on those drafts, right?

5 A. We discussed them. I don't recall whether there were any
6 revisions, but there were additional demonstratives that we
7 thought would be helpful for my testimony.

8 THE COURT: "Them" being counsel? Defense counsel?

9 THE WITNESS: Apologies. Yes, correct, defense
10 counsel.

11 Q. So you talked in your direct testimony about the difference
12 between anonymity and pseudonymity. Do you remember that?

13 A. I do.

14 Q. And a pseudonym, you testified, could be like an e-mail
15 address, right?

16 A. It can be, yes.

17 Q. And an e-mail address could be in someone's real name or it
18 could be in a fake name, right?

19 A. Correct.

20 Q. Or it could be sort of like a string of letters and numbers
21 that don't appear to be a name at all, right?

22 A. Correct, like a wallet address, perhaps.

23 Q. And you gave the example of a Twitter handle, right?

24 A. I did.

25 Q. And so a Twitter handle similarly could have someone's real

N4R3CHA4

Edman - Cross

1 name, correct?

2 A. It could.

3 Q. Or it could have a nickname, right?

4 A. It could.

5 Q. And you would agree that the writer Mark Twain, that's a
6 pseudonym, that's a pen name, correct, for the person named
7 Samuel Clemens?

8 A. That is my understanding.

9 Q. So, Samuel Clemens could have written a book in his real
10 name if he had wanted to, presumably?

11 MR. MILLER: Objection.

12 THE COURT: Sustained.

13 Q. And a person could write a book under the name Anonymous,
14 correct?

15 MR. MILLER: Same objection.

16 THE COURT: Overruled. But Mr. Miller, microphone,
17 please.

18 MR. MILLER: Sorry.

19 A. I don't see any reason why they couldn't.

20 Q. And they could use a pen name like Mark Twain, right?

21 A. I'm sorry. Can you restate the question?

22 Q. A person can write a book using a pen name or a pseudonym,
23 right?

24 A. Correct.

25 Q. Can we please pull up for everyone what's in evidence as

N4R3CHA4

Edman - Cross

1 Government Exhibit 304.

2 And we're looking at a screenshot from OpenSea's
3 website, right?

4 A. I believe so, yes.

5 Q. And do you see how there's a green circle on the left side
6 of the page?

7 A. My apologies. I'm red green color blind.

8 Q. I'm sorry. It wasn't meant to be a trick question.

9 Do you see a circle on the left side of the page?

10 A. I do see a circle on the left side of the page.

11 Q. This is a place on OpenSea where a person can personalize
12 the page, correct?

13 A. Correct.

14 Q. They can add a picture of themselves, right?

15 A. They can. However, in this screenshot, it does not appear
16 that a wallet is connected.

17 THE COURT: Hold on. Just answer counsel's question.

18 So the answer is yes, you can add a picture of
19 yourself on your OpenSea account.

20 THE WITNESS: If certain conditions are met, yes.

21 MS. NICHOLS: Let's take that down, Mr. Bianco, and
22 pull up Government Exhibit 312. Let's try 311, please. Let's
23 zoom in there.

24 Q. So there's also a circle on this page, right?

25 A. There is.

N4R3CHA4

Edman - Cross

1 Q. And the --

2 THE COURT: Would you like to publish?

3 MS. NICHOLS: I'm sorry, your Honor. I thought it was
4 published. We would, thank you.

5 THE COURT: You may.

6 Q. This is a screenshot from OpenSea's page, OpenSea's
7 website, right, Dr. Edman?

8 A. It appears so, yes.

9 Q. There is a circle on the left side, correct?

10 A. There is.

11 Q. And that's a place where a person could put a profile
12 picture if they wanted to, correct?

13 A. Again, if certain conditions are met they could.

14 Q. And there's a word right under the circle, right?

15 A. There is.

16 Q. That word is Unnamed, correct?

17 A. Correct.

18 Q. And right under Unnamed, there is a string of letters and
19 numbers; true?

20 A. True.

21 MS. NICHOLS: Can we pull up side by side Government
22 Exhibit 300 with this exhibit. Could we zoom in so it is a
23 little bit bigger.

24 Q. Government Exhibit 300 is also from OpenSea's website,
25 correct?

N4R3CHA4

Edman - Cross

1 A. It appears so.

2 Q. And in the circle where a profile picture can be, do you
3 see there is an image there?

4 A. I do.

5 Q. And do you see that there is a name under the image?

6 A. I do.

7 Q. Would you read that name.

8 A. Nate Chastain.

9 Q. Under the name Nate Chastain, there is also a string of
10 letters and numbers, correct?

11 A. Correct.

12 Q. Do you see on the right side of this screen, Government
13 Exhibit 300, there is a little icon of a bird?

14 A. I see it.

15 Q. And that's a link to Twitter, correct?

16 A. That would be my assumption.

17 Q. You're familiar with Twitter, right?

18 A. I am.

19 Q. And Twitter's icon is a little bird, right?

20 A. Yes.

21 Q. So, you would agree with me that Government Exhibit 311 and
22 Government Exhibit 300 have different degrees of anonymity,
23 wouldn't you?

24 MR. MILLER: Objection.

25 THE COURT: Overruled.

N4R3CHA4

Edman - Cross

1 A. I wouldn't agree that these are anonymous. They are
2 pseudonymous. These different profiles are identified via
3 wallet address. On the right, the user has chosen to attribute
4 additional information to that pseudonym. But, both of these
5 are screenshots of pseudonyms.

6 Q. Government Exhibit 300 bears a name associated with this
7 exhibit, correct?

8 A. There is.

9 Q. And that name is Nate Chastain, correct?

10 A. Correct.

11 Q. And Government Exhibit 311, there is no name associated
12 with it, correct?

13 A. It says Unnamed. In theory, I can't see why you couldn't
14 put Unnamed as your pseudonym.

15 Q. Is it your testimony that the -- you are an expert in -- I
16 think you said you have experience in anonymous communication
17 systems; is that right?

18 A. Correct.

19 Q. And you testified that you never talked to the defendant
20 Nate Chastain, correct?

21 A. Correct.

22 Q. And so, you don't know whether he uses terms like anonymous
23 or not to describe activity on the blockchain, correct?

24 A. Correct.

25 Q. And you haven't been in court during prior testimony,

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Edman - Cross

1 right?

2 A. I have not.

3 Q. And you haven't reviewed all of the exhibits that have been
4 admitted at this trial, right?

5 A. I don't know the universe of what's been admitted. But, I
6 would imagine I haven't reviewed them all.

7 MS. NICHOLS: Can we please pull up Government Exhibit
8 201, your Honor?

9 THE COURT: Actually, no, because it's 2:30 on the dot
10 so we'll stop there for the day.

11 Ladies and gentlemen, I told you I'd try to give you
12 an estimate where things are. I do think we're moving at a
13 relatively fast clip. The government has rested as you know,
14 so I think that puts us in a pretty good spot.

15 I will have more information for you tomorrow. I am
16 going to talk to the lawyers to get a better sense of things,
17 but it would not surprise me, let me put it that way, if we
18 reached summations on Monday. I don't expect we will tomorrow.
19 I think tomorrow will either -- well, we'll sit our regular
20 day, and may even end sooner than that, depending on how things
21 play out.

22 It is a little hard to predict these things, but
23 wouldn't surprise me if we get to summations on Monday. I tell
24 you that in part because you may recall that I had told you
25 that when we get to summations, I may ask you to stay a longer

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Edman - Cross

1 day, basically 9 to 5, with longer breaks, I promise. That's
2 just because it becomes a little bit harder to manage, given
3 the length of summations, my instructions, etc., and then with
4 respect to your deliberations, the same.

5 So, all that is to say, so you can plan accordingly, I
6 would be prepared for the possibility that Monday I ask you to
7 be here for a full day. I will certainly have a better sense
8 of that tomorrow, but just wanted to give you a heads up today
9 so you can plan your lives accordingly.

10 Aside from that, my usual instructions apply. You've
11 heard the government's case but you haven't heard all the
12 evidence. So keep an open mind, don't discuss the case with
13 each other or with anyone else, don't do any research about the
14 case.

15 Please be in the jury room tomorrow morning no later
16 than 8:45. And with that, I wish you a pleasant afternoon and
17 evening. Thank you, and get to work or home safely.

18 (Jury excused)

19 (Continued on next page)

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1 THE COURT: Be seated. Dr. Edman, you are on
2 cross-examination, so you may not communicate with the defense
3 team, anyone associated with the defense team about the
4 substance of your testimony. Logistics are fine. But the main
5 thing you need to know is please be back here shortly before 9
6 tomorrow ready to go at or as close to 9 as possible. All
7 right?

8 THE WITNESS: Yes.

9 THE COURT: You may step down. You are excused for
10 the day.

11 (Witness temporarily excused)

12 THE COURT: Ms. Nichols, any estimate how much more
13 cross you have?

14 MS. NICHOLS: I'm not good at estimating in general,
15 your Honor, but I think probably an hour.

16 THE COURT: All right. I would urge you to use the
17 afternoon and evening to pare it down if you can.

18 MS. NICHOLS: Yes, your Honor.

19 THE COURT: Less is usually more on cross.
20 And defense witnesses after Dr. Edman, are we still
21 looking at Ms. Sheffield and then Mr. Thakrar?

22 MR. MILLER: I think we are just looking at
23 Ms. Sheffield.

24 THE COURT: And you would anticipate you would then
25 rest?

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1 MR. MILLER: Yes, your Honor.

2 THE COURT: Should I speak with your client now about
3 his decision to testify or should I wait until tomorrow on that
4 so you can talk to him one last time about it?

5 MR. MILLER: I think we should wait until tomorrow
6 morning.

7 THE COURT: How long do you think Ms. Sheffield's
8 testimony would be?

9 MR. MILLER: Very short, your Honor. Maybe 10
10 minutes.

11 THE COURT: All right. So sounds like we'll have a
12 short day tomorrow, or at least a short day of testimony, and
13 we'll have the charge conference later in the day. Does that
14 seem right to everyone? All right. Seems right to me. That's
15 helpful.

16 One thing just for the record, I did refresh my
17 recollection about my own rules, and looked at the rule that
18 Mr. Filor was pointing to or relying on. It states very
19 clearly, if both sides intend to call a particular witness, the
20 parties shall confer in an effort to ensure that the witness
21 does not need to be called twice.

22 First of all, that generally applies more in the civil
23 context where parties actually submit a joint pretrial order
24 and list the witnesses they intend to call. But be that as it
25 may, it's quite clear that it is mandatory to confer where

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1 parties anticipate that that circumstance will arise. And as
2 Mr. Roos' comment makes clear, that did not happen here. So,
3 given that, that rule did not apply.

4 And to the extent the defense wished to call Mr. Viau
5 to go beyond the scope of the direct examination that the
6 government did, perhaps they would be allowed. But in any
7 event, I wasn't going to permit going beyond the scope in
8 cross.

9 I think for what it's worth, I did permit a little bit
10 more latitude than I might have otherwise, but that is the last
11 I will say on that subject.

12 Mr. Miller, did you want to make any record on the
13 Rule 29 front?

14 MR. MILLER: Yes, your Honor. Thank you.

15 The defense would move at this time pursuant to Rule
16 29 for a judgment of acquittal on both counts. If I may just
17 take a minute, your Honor.

18 First, with respect to the wire fraud count, the
19 defense submits respectfully that the government has not
20 provided evidence that any rational trier of fact could find
21 Count One beyond a reasonable doubt. Not only in terms of
22 whether or not OpenSea considered the information confidential
23 at issue, but did not in fact treat the information as
24 confidential at issue.

25 And obviously that's with respect to Count One. Count

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1 Two I have a little bit more to say.

2 THE COURT: All right. That motion is denied.
3 Certainly I think there are arguments that you have and can and
4 will make to the jury. But I think there is sufficient
5 evidence for the jury to find that it qualifies as confidential
6 business information and property, which is not to say they
7 will so find, but that's not the standard here.

8 MR. MILLER: Yes, your Honor. Thank you.

9 As to Count Two, the money laundering count, I'll get
10 a little bit more into this, but we actually think that the
11 government has not provided evidence sufficient for a rational
12 trier of fact to find money laundering elements beyond a
13 reasonable doubt on all elements, but I would, however, mention
14 with respect to the use of interstate wires, that there has not
15 been evidence that's been submitted, as far as we know, on
16 whether or not the transactions at issue in any way affected
17 interstate commerce involving the movement of funds by wire.

18 And as your Honor is aware, under 18 U.S.C. 1956, in
19 addition, of course, to the government having to prove intent
20 to conceal the proceeds of a specified unlawful activity, the
21 government must prove beyond a reasonable doubt that the
22 defendant's conduct was a financial transaction involving
23 proceeds of a SUA, in this case the wire fraud.

24 And financial transaction is defined in 18 U.S.C.
25 1956(c)(4) as a transaction that in any way affects interstate

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1 commerce involving movement of funds by wire. We have not had
2 any testimony, and as far as we know, there are no documents
3 that have been submitted, that demonstrate that whether it is
4 the movement of Ether or if it is the movement of NFTs on the
5 blockchain, that there has been any interstate transfer among
6 the nodes involved to demonstrate there has been a transaction,
7 a financial transaction that represents the proceeds of the
8 SUA.

9 We stipulated to interstate nexus under Count One for
10 very different reasons. And we actually think that the
11 interstate wire element has not been proven, and that a
12 rational trier of fact cannot find those essential elements
13 beyond a reasonable doubt with respect to Count Two, your
14 Honor.

15 THE COURT: And I don't entirely understand. There
16 was testimony that Mr. Chastain engaged in transactions on the
17 OpenSea platform, that is to say, buying and using NFTs, while
18 using Ethers. There was testimony that the servers at the
19 relevant time were located in Virginia. Does that not suffice?

20 MR. MILLER: We respectfully submit that the proceeds
21 of the SUA is actually the ETH, and that's what they needed to
22 prove on the movement. That there was an interstate nexus,
23 which they have not.

24 It is not that the buying of the NFT was the proceeds
25 of the SUA. That's why we respectfully submit, we stipulated

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1 to interstate nexus on Count One for that reason. But not as
2 with respect to Count Two.

3 THE COURT: Government wish to be heard?

4 MR. BURNETT: Yes, your Honor. For starters, I think
5 Mr. Miller is not articulating that right legal language.

6 So the definition of financial transaction means any
7 transaction which in any way or degree affects interstate or
8 foreign commerce involving the movement of funds by wire or
9 other means, involving one or more monetary instruments or
10 involving the transfer, title of any real property, vehicle,
11 vessel or aircraft or involving a financial institution.

12 Here, I think there are a few ways that the
13 transactions involved affected interstate commerce. All of the
14 transactions here occurred over OpenSea, which is a platform
15 where people post NFTs and make transactions with other users
16 across the country.

17 The jury heard evidence that there were users from
18 Canada, like Ms. Idowu, and other states like Mr. Salmon, who
19 are on the OpenSea platform. The jury also heard that the
20 underlying plumbing on which these transactions take place is
21 the blockchain, and Mr. Atallah testified that the blockchain
22 involves a decentralized network of computers that exist all
23 over the world. And any time a transaction occurs on the
24 blockchain, there is the information about that transaction is
25 coded on the different nodes and stored on those computers.

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1 So every one of these financial -- every one of these
2 transactions that Mr. Chastain engaged in, in the course of
3 buying and selling the NFTs using misappropriated confidential
4 information, involved interacting with that international
5 distributed ledger of the blockchain we've heard so much about.

6 And then finally, interacting with OpenSea itself to
7 do these transactions involved interacting with OpenSea's
8 servers to accomplish the financial transactions, and the
9 servers at the time were located in Virginia, whereas
10 Mr. Chastain was located in New York.

11 THE COURT: All right. Mr. Miller.

12 MR. MILLER: I'll just note in terms of the node
13 argument, which I think is actually what's at issue here, while
14 the blockchain itself may be a distributed ledger across the
15 world, there has been no testimony, no evidence, that the
16 transactions in this case, the Ether that was transferred that
17 was the proceeds of the alleged SUA in this case went on a
18 blockchain that somehow went from wherever to New York or vice
19 versa, because there has been plenty of testimony --

20 THE COURT: I think Mr. Burnett's point is all that is
21 required is it be in or affecting interstate commerce, and the
22 affect can be minimal. Any involvement at all can satisfy this
23 element, I think is the relevant language.

24 So it strikes me that for all the reasons Mr. Burnett
25 articulated, that a rational jury can find these were

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1 transferred funds, which, in part, because it was on OpenSea,
2 which we heard was the largest platform for basically buying
3 and selling things across the globe, that it therefore
4 qualifies.

5 MR. MILLER: I hear what your Honor is saying. I'll
6 just note that I think this is maybe the first time this is
7 coming up in this context. Again, with respect to OpenSea,
8 just saying OpenSea has servers in Virginia and people around
9 the country and the world who interact with it, fine. Again,
10 we stipulated to Count One on the interstate wire element.
11 But, since I know -- I don't mean to repeat myself. But you
12 know my arguments with respect to the proceeds here. So I'll
13 sit down.

14 THE COURT: I'm not sure there is a meaningful
15 difference between me reserving judgment and denying it for the
16 reasons there is sufficient evidence for the jury. You have
17 preserved it to the extent there might be some novel issue that
18 I'm missing. Whether it's reserved or denied, it's going to
19 the jury on that issue.

20 Anything else on Count Two?

21 MR. MILLER: No, your Honor.

22 THE COURT: Very good. Reminder to get an updated
23 exhibit list. And also, I will reinforce this at the charge
24 conference tomorrow, but everybody should be on same page about
25 the plan with respect to submitting evidence to the jury. If

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1 that's going to be done on a laptop, assembling it, getting all
2 that done and squared away.

3 Anything else that the government needs to raise? And
4 sorry. To the extent that you anticipate -- well, do you
5 anticipate filing anything further on the jury instruction
6 front or is the universe on that closed? Both of you I think
7 have intimated you might have things to file, but not sure when
8 and what.

9 MR. ROOS: We will and tell us when you want them.

10 THE COURT: Five minutes.

11 Sooner rather than later. We're working on the
12 instructions and I want to think about it. So, when can you do
13 it? How soon can you do it? And also what is it?

14 MR. ROOS: There are a few that I think your Honor, if
15 they're not already in the request to charge, and we are going
16 to check, your Honor I'm sure has standard instructions on them
17 for those. If it's okay, we'll just say -- I am just using an
18 example since there was cross about it -- preparation of
19 witnesses.

20 THE COURT: That's in there.

21 MR. ROOS: Okay.

22 THE COURT: Next?

23 MR. ROOS: There are maybe a few relating to things in
24 the opening that we view as something the jury shouldn't
25 consider. Attempt at nullification. And so, that was

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1 something we were thinking of putting an instruction or a
2 request for instruction in on.

3 And then, there are two issues, legal issues relating
4 to original requests that the defense put in. One is we
5 disagree with sort of the articulation of the mens rea
6 requirement, the willfulness instruction, and I think your
7 Honor is like fairly well attuned to the issues around wire
8 fraud and willfulness and sort of the debate. But we're happy
9 to give you cases on that. And we can probably do that pretty
10 quickly.

11 And second is the defense cites *Cuellar* for a
12 proposition that merely hiding something is not an act of
13 concealment. We disagree with that reading of the Supreme
14 Court case there and its application here. So, if your Honor
15 was considering that instruction, we would put in something on
16 that as well.

17 THE COURT: All right. You should put it in on both.
18 On willfulness, I think I did include it in *Avenatti*, but I
19 think that was in part because the government had included the
20 word in the indictment and therefore didn't stand on the
21 argument.

22 I would look at an address in your submission Judge
23 Oetken's decision in *Middendorf*, which I think takes the
24 position that willfulness should be included, but doesn't adopt
25 the language that the defense is requesting here. It's not

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1 clear to me that the government would object if willfulness
2 were defined in that way, but why don't you make that clear.

3 Yes, Mr. Miller.

4 MR. MILLER: We also will be submitting something to
5 your Honor on willfulness on the money laundering proposition.

6 There is no reason for an attempted nullification
7 instruction. I did not in my opening attempt to nullify, and I
8 said nothing of the sort. If Mr. Roos is referring to his
9 objection, because after talking about what the government has
10 to prove beyond a reasonable doubt, multiple times, throughout
11 my opening, I said the government should never have charged
12 this case. He objected. My point was that there is no crime.
13 That's not an attempt at nullification. Especially in the
14 context of me saying over and over again, the government cannot
15 prove the charges beyond a reasonable doubt.

16 MR. ROOS: I tried not to object during the defense
17 opening. Ultimately I did at the end. What I'm thinking of is
18 the sort of non-equivalency arguments the defendants made about
19 this is not a case where somebody stole M&A information or they
20 inside traded in stocks. The arguments how it was only \$50,000
21 or less, in order to diminish the value or the gravity of the
22 defendant's conduct. Those are the things we're worried about,
23 where we get to a place where the jury is basically told, he
24 did it, but, like, doesn't really matter because it's not a lot
25 of money, and it is certainly not like what they do on Wall

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1 Street.

2 THE COURT: I'll consider the government's request. I
3 would say I'm disinclined to include anything explicitly about
4 nullification or an anti-nullification instruction. I also
5 think for the government's purposes, that calling attention to
6 that may not be in your interest. But be that as it may, I am
7 not sure there was any argument that was made that justifies
8 it.

9 I think there might be an argument, and I'll think
10 about it, for the instruction regarding property, to make clear
11 that it doesn't have to be a lot of property. It doesn't have
12 to be a lot of money. That any amount of money or property
13 would suffice to satisfy that element. But I'll leave you to
14 propose something on that score. We can discuss it.

15 MR. MILLER: One quick point on that, Judge. I never
16 said, oh, this is only \$50,000. I specifically did not go
17 there.

18 THE COURT: You did draw contrast with insider trading
19 type cases involving millions of dollars of stock. I think
20 even if you didn't articulate it explicitly, the comparison and
21 the contrast was clear.

22 MR. MILLER: Mr. Roos talked about that, talking about
23 inside information in stock and stock exchange, etc.

24 THE COURT: Not the millions of dollars. I don't
25 think he opened on that. That would have been a strange thing

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1 for the government to have done.

2 I am not saying I am going to do that. I am just
3 saying that I can see an argument for it, and if the government
4 requests it, we'll discuss it and we'll go from there. And
5 this isn't the charge conference.

6 Mr. Miller, anything else that you anticipate your
7 submission will address just so I can plan?

8 MR. MILLER: You know, I apologize, your Honor, I'm
9 not sure I'm prepared to say. I don't think we have -- sorry.
10 One moment, your Honor.

11 I think our focus, I am going to clearly respond to
12 this point, your Honor, but I think our focus is going to be on
13 willfulness and money laundering. Obviously the rest of the
14 request to charge we've submitted.

15 One question, your Honor. I cannot recall if we had a
16 request for the standard instruction about law enforcement
17 witnesses.

18 THE COURT: It's in there, so whether you did or not.

19 MR. MILLER: And then my last question, your Honor, is
20 if, for example, the testimony ends tomorrow, between the cross
21 and redirect and then our paralegal essentially, let's say the
22 testimony ends at 10. Is it fair to assume we're still not
23 going to engage in summations tomorrow and that's Monday?

24 THE COURT: Yes.

25 MR. MILLER: Thank you.

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1 THE COURT: We need to have the charge conference and
2 that ends up making it impossible to proceed with summations.
3 All right.

4 Is it realistic to -- well, would 6 p.m. be realistic
5 or is that overly ambitious?

6 MR. ROOS: I was going to suggest 7 but we could do 6.

7 MR. MILLER: Can I request 8.? We have to actually
8 travel back we are not over here.

9 THE COURT: Fair point. Sure. I'll say 8 o'clock.
10 Here is the problem. I have a full evening of commitments.
11 There is a gala dinner honoring Judge Cabranes on his 43rd
12 anniversary on the bench that I'm hosting upstairs. I am not
13 going to have a lot of time tonight to devote to this. So the
14 cost of that is we'll probably have a lengthier break after the
15 close of the evidence tomorrow, and you are not going to get
16 the charge the draft immediately at the close of evidence, and
17 you'll therefore have a shorter time to review it. But that's
18 the price you'll pay.

19 MR. MILLER: Thank you, Judge.

20 THE COURT: Not going to be a super long charge, so
21 that shouldn't be too difficult. And I think it is obvious the
22 few things that are likely to be the subject of our
23 discussions.

24 Anything else from the government?

25 MR. ROOS: No, your Honor.

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1 MR. MILLER: No, your Honor. Thank you.

2 THE COURT: All right. See you same time, same place
3 tomorrow morning. Have a good afternoon and evening.

4 (Adjourned until April 28, 2023, at 9 a.m.)

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13	Exhibit No.	Received
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15	22	503
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